



Appeal Decision

Site visit made on 7 July 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8TH SEPTEMBER 2023

Appeal Ref: APP/Z5060/X/22/3294717

Land at 195 Morley Road, Barking IG11 7DH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Aurimas Baura against the decision of the Council of the London Borough of Barking and Dagenham.
 - The application ref 22/00005/CLUE, dated 1 January 2022, was refused by notice dated 28 February 2022.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as: 'Previously extended house, use as a 3 bedroom family house. Conversion of roof space into habitable room'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use and operation which is found to be lawful.

Preliminary Matters

2. The description of the development subject of the LDC application is not entirely clear from the LDC application forms. The description used by the Council on the decision notice is 'existing loft conversion to facilitate the roof space into habitable accommodation and the use of the house as three bedroom dwelling'. This description has not, however, been used by the appellant in his appeal form. Instead, for the description of the development that is the subject of the appeal, he refers only to a '3b House'. However, his evidence refers to both the use of the property as a single dwelling and to a dormer extension and 'conversion' of roof space.
3. In view of the above, and having viewed the property, I will determine the appeal on the basis that the LDC is sought for a use of the appeal site as a single dwelling falling within Class C3 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order). As for the dormer and conversion works, ordinarily the use of the original attic space of a dwelling for accommodation (e.g. an attic bedroom) would not amount to development. Accordingly, and in the interests of precision, I will determine the appeal on the basis that an LDC is sought for a dormer roof extension on the rear roof slope of the building.
4. On a separate matter, the site visit had been arranged as an accompanied visit, where a representative of both the Council and appellant would be in attendance. The Council's representative did not, however, attend the site at the time and date specified. Accordingly, I carried out the site visit as an

access only visit. In doing so I am satisfied that neither party would be prejudiced in any way.

Main Issue

5. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue in this case is whether the Council's decision to refuse to grant a LDC was well founded.
6. The main consideration is whether the use of the appeal site as a single dwelling and the dormer extension were lawful on the date the LDC application was made.
7. The burden of proof in this case is on the appellant, and the test of the evidence is the balance of probabilities. If the Council has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal and refuse to grant the LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous.

Reasons

Use as a single dwelling

8. I note that there has been an extensive history to the site. I have seen reference to the issue of two enforcement notices, to planning applications and to a number of appeals.
9. The appellant has provided a chronology of events in his evidence. This suggests that when he purchased the property in 2016, it was a family home. This is not disputed by the Council.
10. I note the officer report relating to the planning application reference 18/00892/FUL. The description of development given is for the 'conversion of dwelling to two 1 bedroom flats and one studio flat (retrospective)'. Whilst the report suggests that the development has already occurred, it describes the former use as a dwelling. It refers to 'pre-existing floor plans' submitted with the application and says that the 'house is considered to be part of the Borough's stock of family housing'.
11. The report does not indicate that the appeal site was being used at the time of that application as a single dwelling, as suggested by the appellant. On the contrary, it suggests that the development subject of that application (i.e. the change of use to two 1 bedroom flats and one studio flat) had occurred at that time. Notwithstanding this, the report indicates that the Council regarded the use of the site prior to the development taking place as a single dwelling. Indeed, the Council does not take a different view on this in the appeal before me.

12. In view of the above, I have no reason to conclude that the lawful use of the property at the time of the appellant's purchase of it was anything other than as a single dwelling.
13. Moving on, as I have noted above, the report relating to the 18/00892/FUL planning application indicates that at the time of writing there had been a change of use of the site from a dwelling to three flats. This clearly prompted the issue of the first enforcement notice, dated 20 September 2018, which was targeted at a use of the site as 'three independent units of accommodation'. As an appeal was not made against this notice, the period for compliance expired on 20 January 2019. Its requirements included the cessation of this use.
14. The second enforcement notice, issued on 4 June 2020, was upheld with corrections at appeal. This requires, amongst other matters, the cessation of the use of the property as more than one self-contained dwellinghouse. The notice gave 6 months for compliance with its requirements, which would have ended on 14 June 2021. I note that the appeal against the notice was made under section 174(b) of the 1990 Act, as well as section 174(c). Accordingly, whether or not the matters stated in the enforcement notice had occurred was considered by the appointed Inspector. The ground (b) appeal failed.
15. In view of the above, whilst I note the appellant's contentions with regard to the use of the site since his purchase of it, it is more likely than not that there has been a change of use of the site from a dwelling and that the property had been sub divided into separate units of accommodation (i.e. separate dwellings).
16. Notwithstanding the above, I am mindful of the provisions of section 57(4) of the 1990 Act. This informs that 'where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out'. I have concluded above that the lawful use of the site prior to its sub-division into separate dwellings was as a single dwelling. The appellant says that the notices that were subsequently issued have been complied with. This is not disputed by the Council. Accordingly, I am led to conclude that planning permission is not required for the use of the site as a single dwelling. Indeed, I have been given no reason to conclude that the provisions of section 57(4) of the 1990 Act would not apply in this way. Furthermore, the appellant suggests that the current use of the site is as a single dwelling. I have no reason to find otherwise.
17. All things considered, it is more likely than not that on the day the LDC application was made the use of the site as a single dwelling falling within Class C3 of Part C, Schedule 1 of the 1987 Order was lawful.

Dormer

18. The operational development subject of the appeal comprises a flat roof dormer extension on the rear roof slope of the dwelling.
19. The Council has referred to Class B, of Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, hereafter referred to as Class B. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The Council

say that the development does not benefit from the provisions of Class B as the dormer was built to facilitate the unauthorised change of use to three flats. The Council also say that the development does not benefit from the Class B permission as it does not comply with a condition of the permission. It points to condition (a) of paragraph B.2. of Class B.

20. The appellant does not agree with the Council's position, as summarised above. Furthermore, it is the appellant's case that, regardless of whether or not the provisions of Class B apply, the dormer extension is lawful as it was constructed more than 4 years prior to the submission of the LDC application.
21. To succeed on this point the appellant must show that, on the balance of probability, a period of four years has passed beginning with the date on which the dormer extension was substantially completed¹.
22. The appellant has provided two photographs of the dormer extension. The first is dated 3 March 2017 and shows the rear elevation of the property with the rear facing elevation of the dormer extension. From this I can see that the extension has an external brick finish, three windows, a roof overhang, suggesting the presence of a roof, and a down pipe. The second photograph has not been dated, but is likely to have been taken after the first as it shows the rear elevation of the dwelling as I had observed it on site. The dormer extension is finished with a smooth render and the rear extensions and balcony are present in this photograph.
23. In his chronology, on 1 March 2017 date, the appellant refers to the 'loft' as having been erected and completed and used as a master bedroom. This is consistent with the first of the appellant's photographs referred to above. Whilst I acknowledge that the dormer may well have been rendered at a later date, I have no reason to conclude the dormer had not been substantially completed on the 1 March 2017 date suggested by the appellant. The evidence indicates that at this time the development was fully detailed and had the character of a dormer extension providing additional accommodation space within the roof of the building.
24. The Council does not appear to dispute the appellant's evidence, as set out above. In the officer's report, the Council refers to this evidence and acknowledges that the dormer extension 'was in place prior to the enforcement case being opened', which was 15 May 2018. Although this date would have been less than 4 years prior to the date the LDC application was made, there is no contradiction of the appellant's claims.
25. I have been given no reason to conclude that the appellant's version of events are less than probable. Accordingly, it is more likely than not that a period of more than four years has passed beginning with the date on which the dormer extension was substantially completed. For this reason, I conclude that on the balance of probability, the dormer extension was lawful on the date the LDC application was made.
26. In view of my conclusions above, I have not considered whether or not the development benefits from the permission granted by Class B.

¹ In accordance with section 171B(1) of the 1990 Act.

Conclusion

27. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the site as a single dwelling falling within Class C3 of Part C, Schedule 1 of the 1987 Order and the dormer roof extension on the rear roof slope of the building was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

J Moss

INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 1 January 2022 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated, on the balance of probability, that on the date the application for a lawful development certificate was made the lawful use of the land was as a single dwelling falling within Class C3 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended and that a period of more than four years had passed beginning with the date on which the dormer roof extension was substantially completed.

Signed

J Moss

Inspector

Date: 8TH SEPTEMBER 2023

Reference: APP/Z5060/X/22/3294717

First Schedule

Use as a single dwelling falling within Class C3 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended and a dormer roof extension on the rear roof slope of the building.

Second Schedule

Land at 195 Morley Road, Barking IG11 7DH

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use and operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 8 SEPTEMBER 2023

by **J Moss BSc (Hons) DipTP MRTPI**

Land at: 195 Morley Road, Barking IG11 7DH

Reference: APP/Z5060/X/22/3294717

Scale: Not to Scale

