



Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Appeal Ref: APP/Q5300/X/23/3320773
91 New River Crescent, London N13 5RL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Sylvane Rajaratnam against the decision of the Council of the London Borough of Enfield.
 - The application Ref 23/00128/CEA, dated 17 January 2023, was refused by notice dated 28 March 2023.
 - The application was made under section 192(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 loft conversion including a rear and outrigger dormer with front and side roof lights and removal of the pitched roof.
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Decision

1. The appeal is allowed for the proposed loft conversion including a rear and outrigger dormer with front and side roof lights and removal of the pitched roof and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

Procedural Matters

2. No site visit has been carried out as the appeal can be decided purely on the basis of the technical and/or legal interpretation of the facts.¹
3. The drawings submitted with the appeal have significantly different drawing numbers to those listed on the Council's decision notice notwithstanding that the appellant confirms they are the same drawings. The Council were asked several times whether the appeal drawings are the same as those considered during the processing of the application, however no response was given. On the basis that the burden of proof rests with the appellant in matters of lawfulness, I shall proceed on the assumption that the drawings before me were those before the Council.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development for the proposal was well-founded.

¹ Certificate of lawful use or development appeals- procedural guide, updated 26 July 2023, states at paragraph 7.2.11.5. "A site visit won't be needed for every appeal. It is for the Inspector to decide whether to conduct one."

Reasons

5. The appeal relates to a two storey mid terrace property with a two storey half width outrigger. The outrigger has a mono pitch roof adjoining No 89 New River Close. The appellant proposes to add an 'L' shaped dormer extending between the raised party walls on the main roof and projecting two thirds of the way over the outrigger roof area. This would provide two additional bedrooms and a bathroom. In addition, there would be roof lights and the remaining outrigger roof would be removed to leave a flat roof area.
6. The Council advise there are no planning restraints pertaining to the property. The principle point at issue is the volume of the roof extension. The Council accepts that, in all other respects, the proposed roof extension would accord with the limitations set out in Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) and I see no reason to take a different view.
7. The appellant disagrees with the Council's calculations for the volume of the extension, which is in this case limited to 40 cubic metres in order to benefit from permitted development. The submitted drawings include calculations to demonstrate how the permitted volume (shown to be 38.5 cubic metres) is achieved. The Council submit that the volume of the extension would be 44.3 cubic metres.
8. The difference between the parties turns on the interpretation of paragraph (d) in Class B which states "the cubic content of the *resulting* (my emphasis) roof space would exceed the cubic content of the original roof space by more than 40 cubic metres." The appellant relies on Government guidance² which has been produced to assist with the interpretation of legislation. This states "For the purposes of Class B, "resulting roof space" means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not."
9. Essentially, in order to meet the requirements of Class B paragraph (d) the appellant has calculated that the existing main roof volume is 45.1 cubic metres and the existing outrigger roof volume is 14 cubic metres making a total of 59.1 cubic metres. Adding the 40 cubic metres permitted extra allowance brings this to a total of 99.1 cubic metres, which is the resulting roof space.
10. Flattening part of the outrigger roof creates a volume of 4.4 cubic metres, which the appellant proposes to move, in effect, to the main roof. As such, the calculation becomes the existing roof volume (previously calculated to be 59.1 cubic metres) plus the volume of the proposed development (42.9 cubic metres) and minus the flattened outrigger volume equates to 97.6 cubic metres. This is less than the 99.1 cubic metres volume, and as such it is considered that the resulting roof space is permitted development.
11. I find that this is the case as it all turns on the words "resulting roof space". By flattening part of the outrigger roof, the appellant proposes to use this existing volume to offset the size of the proposed dormer. It has not been demonstrated by the Council that this interpretation of the legislation does not accord with Class B and the Council have not responded to the grounds of

² Permitted development rights for householders: technical guidance, September 2019

appeal and rely only on the Officer's report. Overall, I therefore conclude that the proposed roof extension would benefit from the permitted development set out in Schedule 2, Part 1, Classes B and C of the GPDO.

Conclusion

12. 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 loft conversion including a rear and outrigger dormer with front and side roof lights and removal of the pitched roof was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me on the section 195(2) of the 1990 Act as amended.

D Fleming

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 17 January 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The roof extension would constitute development within the meaning of section 55 of the Town and Country Planning Act 1990 as amended, for which planning permission is required. The dwelling house it is also substantially complete. As such, planning permission is granted by Article 3(i) of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the dimensioned roof extension shown on drawing numbers:

Existing drawings 1A, 2A, 3A, 4A and 5A and Proposed drawings 6A, 7A, 8A, 9A, 10A, 11A and 12A sheets 1 and 2 showing Total Volume Calculation, dated 3 January 2023

since the development falls within Classes B and C of Part 1, Schedule 2 and is thus permitted development.

Signed

D Fleming

Inspector

Date 27 October 2023

Reference: APP/Q5300/X/23/3320773

First Schedule

Loft conversion including a rear and outrigger dormer with front and side roof lights and removal of pitched roof

Second Schedule

Land at 91 New River Crescent, London N13 5RL

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 27 October 2023

by **D Fleming BA (Hons) MRTPI**

Land at: 91 New River Crescent, London N13 5RL

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Scale: not to scale

