



Appeal Decision

Site visit made on 17 January 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 15th April 2024

Appeal Ref: APP/T5150/X/22/3310375

Dagmar Cottage, Roskild Court, Dagmar Avenue, Wembley HA9 8DQ

- 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 Adam Elmasri against the decision of the Council of the London Borough of Brent.
- The application Ref 22/2559 dated 18 July 2022 was refused by notice dated 14 September 2022.
- 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 development is sought is proposed single storey side and rear extension, hip to gable roof extensions and side dormer to the dwelling house.

Summary of Decision: the appeal is allowed in part and dismissed in part and a certificate of lawful development is issued in the terms set out below in the Formal Decision.

Preliminary Matters

1. The purpose of an LDC application made under Section 192 of the Act is to find out whether future development as described would be lawful on the date the application was made. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a lawful development certificate for the development was well – founded.

Reasons

3. A single application was made by the appellant for two separate elements namely a single storey side and rear extension and also a hip to gable roof extension and side dormer to the dwellinghouse.

Single storey side and rear extension

4. The Council's delegated report includes a consideration of the single storey and rear extension in terms of the requirements of Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England)

Order 2015 (as amended)(GPDO). Class A refers to the enlargement, improvement or other alteration of a dwellinghouse and the Council have not indicated in that report any issues with compliance with Class A. The report does set out the Council's issues with the roof works. I see no reason to disagree with the parties' view that the single storey side and rear extension would constitute permitted development.

Roof Works

5. Schedule 2, Part 1, Class B of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. The Council considers that the proposed roof works would contravene limitation B.1(c) which states that development is not permitted if *"any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts the highway."*
6. In order for the development to fall within that limitation and to be therefore not permitted, both elements of the limitation need to be met. The parties are in agreement having regard to the relevant Technical Guidance that the elevation which faces Roskild Court is the principal elevation. I have no reason to disagree with the parties' assessment. The works include changing the hip roof to gable which would extend beyond the plane of the existing roof slope which forms the principal elevation. The area of dispute between the parties is limited to whether Roskild Court which is in front of the appeal property is a highway. If it is a highway, then the development would not be permitted development in view of the wording of limitation B.1 (c).
7. The GPDO defines a highway as a public right of way such as a public road, public footpath and bridleway. For the purposes of the Order, it also includes unadopted streets or private ways. Whilst the appellant refers to an appeal decision made in 2006, a degree of judgement will be required in each case depending upon the particular circumstances. The appellant states that the area in question which is called Roskild Court is a private car park for the use of private residents and visitors which is not a public right of way. However, the definition also includes unadopted streets and private ways.
8. It is necessary to consider the function and use of Roskild Court and the manner in which it is used. Roskild Court provides access for the occupiers of two blocks of flats which front onto it and for the occupiers of the appeal property. It also provides access via a side door to 81 Dagmar Avenue as well as access to the rear gardens of a third block of flats which front onto Dagmar Avenue. At the end of Roskild Court, steps in front of the appeal property provide a through route on foot to properties beyond the appeal site.
9. There is a parking area in front of the two blocks of flats with white markings on the pavement to mark spaces. However, signage is limited and on the day of my site visit, cars were also parked outside that designated area at one side of Roskild Court of the entrance. A number of the cars parked on Roskild Court either had no permit or out of date permits. A private car park implies a designated area for a limited group of people with controls. In any event, the provision of parking is only part of the function of Roskild Court.

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10. There are no restrictions to prevent members of the public using Roskild Court to either visit or access residential properties either on Roskild Court itself or in the wider area. Access can be either along a pavement or the tarmac and the public can pass without hindrance.
11. Whilst the road appears not to have been adopted by the local highway authority, given the manner in which it is used and the extent to which it is used both on foot and for vehicles, it does function as a highway. The roof works are therefore excluded by B.1 (c) and are not permitted development under Schedule 2, Part 1, Class B of the GPDO.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development in respect of the hip to gable roof extensions and side dormer to the dwellinghouse was well-founded and the appeal in respect of that part of the development should fail.
13. The Council's refusal to grant a certificate of lawful development in respect of the proposed single storey side and rear extension, was not well founded and the appeal should succeed in that respect. I will exercise accordingly the powers transferred to me under Section 195(2) of the 1990 Act as amended.

E Griffin

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 18 July 2022 the 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, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed single storey side and rear extension would be permitted development in accordance with Schedule 2, Part 1, Class A of the General Permitted Development (England) Order 2015.

Signed

E Griffin

Inspector

Date: 15th April 2024

Reference: APP/T5150/X/22/3310375

First Schedule

single storey side and rear extension

Second Schedule

Land at Dagmar Cottage, Roskild Court, Dagmar Avenue, Wembley HA9 8DQ

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 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: 15th April 2024

by E Griffin LLB Hons

Land at: Dagmar Cottage, Roskild Court, Dagmar Avenue, Wembley HA9 8DQ

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Scale: Not to Scale

