



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 22 May 2024

Appeal Ref: APP/Z5060/X/23/3317124

145A Beccles Drive, Barking and Dagenham, Barking IG11 9HZ

- 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 S Kudhail against the decision of the Council of the London Borough of Barking and Dagenham.
 - The application ref 22/01801/CLUP, dated 25 October 2022, was refused by notice dated 2 December 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 use or development is sought is a hip to gable roof extension with rear dormer extension.
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Preliminary Matters

1. Having considered the evidence submitted, the main considerations in this case and the particular matters in dispute, I am satisfied that no injustice would be caused to any party in determining the appeal without a site visit. The views of the parties were sought on this approach prior to my determination of the appeal.

Main Issue and Main Consideration

2. Section 192(2) 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 would be lawful if instituted or begun 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 burden of proof is on the appellant to show that the development referred to in the application would have been lawful if begun on the date the application was made. The main issue is whether or not the Council's decision to refuse the application was well founded.
3. It is the appellant's case that the proposed development would be permitted by Class B, of Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order), hereafter referred to as Class B. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Criteria (a) to (h) of B.1. specify the type of development that would not be permitted by Class B. The dispute between the parties is whether or not the development would accord with B.1.(d), which states that development would not be permitted by Class B if 'the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than (i) 40 cubic

metres in the case of a terrace house, or (ii) 50 cubic metres in any other case'. This is the main consideration in this case.

Reasons

4. The property subject of this appeal was formerly part of a larger semi-detached dwelling at 145 Beccles Drive. I note that planning permission was granted (Council reference 11/00678/FUL) to extend the dwelling. Some years later, planning permission was granted (Council reference 15/00391/FUL) for the sub division of No 145 to form one two bedroom house (the appeal property – No 145A) and one three bedroom house (what remains of No 145).
5. The appellant says that the development proposes roof enlargements of 17.6 cubic metres. This is not disputed by the Council. The appellant says that the enlargement would not exceed the cubic content of the roof space of No 145A by more than the allowance stated in B.1.(d). When determining whether or not the resultant roof space would exceed the allowances set out in B.1.(d), the comparison is with the original roof space.
6. The appellant's case is that, for the purposes of Class B, the 'original roof space' of the dwellinghouse subject of this appeal is the roof space that existed within the building at No 145A, following the sub division of the former single dwellinghouse at No 145. On the other hand, the Council regards the roof space within the original dwellinghouse at No 145 as the original roof space, and suggests that this has already been enlarged by approximately 40 cubic metres. For this reason, the suggestion is that the proposed enlargement of around 17 cubic metres would exceed the allowance referred to in B.1.(d).
7. Having had regard to the submitted plans, the evidence indicates that at present the building at No 145 comprises the original (No 145) dwellinghouse, as well as certain enlargements to it. This is not disputed. However, this is not the case for the building at No 145A. Being mindful that the definition of a building in section 336 of the 1990 Act includes 'any part of a building, as so defined', there is no dispute that the building at No 145A existed prior to it being used as a dwellinghouse. However, it is the material change of use of this building that has resulted in the dwellinghouse at No 145A, for which the provisions of Part 1 of Article 3, Schedule 2 of the 2015 Order apply. For this reason, it can only follow that the original roof space of this dwellinghouse is the roof space that existed within the building at No 145A when the material change of use took place.
8. This must be correct as the alternative would be that, for the purposes of Part 1 of Article 3, Schedule 2 of the 2015 Order, the dwellinghouse at No 145A contains no original roof space and, indeed, no original dwellinghouse. This assumes that the dwellinghouse at No 145A is contained entirely within the enlargements to the original dwellinghouse at No 145, which the evidence indicates to be the case, but has not been confirmed by either party.
9. There is no suggestion that the roof of the building at no 145A has been enlarged or altered since it became a dwellinghouse. Furthermore, I have been given no other reason to find that the permission granted by Class B would not apply to the dwellinghouse at No 145A. Accordingly, I conclude that the proposed development, comprising enlargements of some 17 cubic metres to the roof of the dwellinghouse at No 145A, would have had the benefit of the

permission granted by Class B had it been instituted or begun on the date the LDC application was made.

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of a hip to gable roof extension with rear dormer extension 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.

Formal Decision

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

J Moss

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 25 October 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations specified in the First Schedule would have had the benefit of the permission granted by Class B of Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

J Moss
Inspector

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First Schedule

A hip to gable roof extension with rear dormer extension.

Second Schedule

Land at 145A Beccles Drive, Barking and Dagenham, Barking IG11 9HZ.

IMPORTANT NOTES – SEE OVER

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, 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: 22 May 2024

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Scale: Not to Scale

