



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 12th June 2024

Appeal Ref: APP/N5090/X/23/3326281

3 The Avenue, Barnet EN5 4EN

- 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 D Keogh against the decision of London Borough of Barnet.
- The application ref 23/1374/192, dated 29 March 2023, was refused by notice dated 4 May 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 a roof extension involving hip to gable, rear dormer with juliette balcony and 1 no front facing rooflight.

Decision

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

Preliminary Matters

2. The appeal form states that the appeal is made by Mr and Mrs Keogh. As only one appeal has been made, I have included D Keogh as the appellant on the banner heading as he is the first person named on the appeal form.
3. Since the application is proposed rather than existing, and having studied the detailed plans, documents, and other appeal submissions from both parties, I am satisfied a decision can be made without a physical inspection of the site. I have therefore determined the appeal on this basis. Although, I have been referred to other appeal decisions, I have to consider the appeal based on the specific facts of the case, the relevant planning law and judicial authority. The relevant date for the determining lawfulness is the date of the application.

Main Issue

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

Main Issue

5. Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. The Council's statement makes clear that the sole issue for the refusal is that the development would contravene limitation B.1(c). I have no reason to disagree with the Council's assessment that the development complies with Schedule 2, Part 1, Class B of the GPDO in all other respects.

6. B.1 (c) 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."*
7. The area of dispute between the parties is therefore limited to whether a projecting element to the side of the appeal dwelling forms part of the principal elevation. If it is, then the development would not comply with limitation B.1(c) as the development would extend beyond the plane of any existing roof slope which forms the principal elevation.
8. Principal elevation is not defined in the GPDO but it is defined in the Governments Technical Guidance September 2019' Permitted development rights for householders as:

"In most cases, the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house."
9. The Guidance states that the principal elevation can include more than one front facing elevation and examples given include bay windows or an L shape frontage. The appeal building is a semi-detached dwelling with two storeys and a bedroom in the roof space with a very modest side projection to the side on the southern elevation. The Council argues that this projection forms part of the front of the house and the principal elevation. It is set back from the front of the house by around a room's length as it sits alongside the rear rooms of the house rather than the front rooms. In view of the combination of the location, degree of set back from the front of the building and the narrow width of the projection, I do not consider that the side projection forms part of the front of the house or the principal elevation.
10. The proposed development would therefore comply with limitation B.1(c) as it would not extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway. I have no evidence to show that the dwelling would fail to meet any other limitation under Class B and so find, on the balance of probabilities, the development would be permitted by Class B of the GPDO.

Conclusion

11. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development in respect of the proposed roof extension involving hip to gable, rear dormer with juliette balcony and 1 no front facing rooflight was not well founded and the appeal should succeed. I will exercise accordingly the powers transferred to me under Section 195(2) of the 1990 Act as amended.

E Griffin

INSPECTOR



The Planning Inspectorate

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 29 March 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 operations would be development which is permitted under Schedule 2, Part 1 of Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

E Griffin

Inspector

Date: 12th June 2024

Reference: **APP/N5090/X/23/3326281**

First Schedule

a roof extension involving hip to gable, rear dormer with juliette balcony and 1 no front facing rooflight

Second Schedule

3 The Avenue, Barnet EN5 4EN

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, 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: 12th June 2024

by E Griffin LLB Hons

Land at: 3 The Avenue Barnet EN5 4EN

Reference: APP/N5090/X/23/3326281

Scale: Not to Scale

