



Appeal Decision

Site visit made on 27 March 2024

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2024

Appeal Ref: APP/T5150/X/22/3310949

34 Bathurst Gardens, London NW10 5JA

- 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 Dery Sterling against the decision of the Council of the London Borough of Brent.
 - The application ref 22/1323, dated 9 April 2022, was refused by notice dated 20 June 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 loft conversion, erection of rear dormer and skylights to the front.
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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 proposed operation which is found to be lawful.

Preliminary Matters

2. The description of the proposed development set out on the Council's decision notice differs to that provided on the application form. I have therefore adopted the description set out by the appellant on the application form, as this was the basis upon which a LDC was sought, and thus it forms the basis of my determination.

Main Issue

3. The main issue is whether the Council's refusal to grant a certificate of lawfulness was well-founded. This turns on whether the proposed operations would have been permitted development having regard to the relevant provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

4. In order for a LDC to be granted under section 192 of the Town and Country Planning Act 1990 (the 1990 Act), it is necessary for the appellant to demonstrate, on the balance of probabilities, that the use or operations described would have been lawful at the time of application, that being 9 April 2022. Planning merits form no part of the assessment for an application for a LDC, which is instead considered on the facts of the case and any relevant judicial authority.
5. The appeal site is a two storey mid-terrace property that is currently used as a house in multiple occupation (HMO) with five bedrooms, two communal kitchens and a study. The proposed development consists of a dormer roof

extension to the rear-facing roof slope and extending out over the roof of the rear two storey outrigger and including the installation of three skylights to the front-facing roof slope. The loft would then contain a sixth bedroom and third kitchen.

6. Schedule 2, Part 1, Class B of the GPDO states that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development. Other alterations to the roof of a dwellinghouse are permitted by Class C of the same Part. Where a building is used as an HMO for up to six residents, the use falls within use class C4 of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (the UCO) and the building is taken to be a dwellinghouse for the purposes of Classes B and C.
7. There is no dispute between the parties that, if the appeal building would remain in use as a C4 HMO, as it should do with having only six bedrooms, the proposed dormer would be permitted under Class B and the skylights would be permitted under Class C. Therefore, the proposed development would comply with the relevant limitations and conditions set out in paragraphs B.1 and B.2 of Class B, and paragraphs C.1 and C.2 of Class C.
8. However, the Council's concern is that the proposed dormer roof extension would create a self-contained flat in the loft, so that there is a material change of use of the building to a mixed use as a flat and HMO. Flats do not benefit from the permitted development rights set out under Part 1 of the GPDO. It follows that, if the proposed works would lead to this material change of use, they would not be lawful.
9. In planning terms, a self-contained flat is a separate dwelling whereas a HMO is a single dwelling in use by people sharing at least one facility. *Gravesham*¹ is the leading authority on defining a dwelling, with the distinctive characteristics of a dwellinghouse being its ability to afford the facilities required for day-to-day private domestic existence. Section 254 of the Housing Act 2004 sets out a number of tests to be met for a property to be considered as a HMO, including, at s254(2)(f), if two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities. Basic amenities are defined as a toilet, personal washing facilities, or cooking facilities.
10. Section 254(8) defines a self-contained flat as a separate premises which forms part of a building, either the whole or a material part of which lies above or below some other part of the building, and in which all three basic amenities are available for the exclusive use of its occupants.
11. The appellant is clear, however, that the building would remain in use as a C4 HMO. The plans accompanying the LDC application show that the roof extension would provide an additional bedroom with en-suite facilities, and a kitchen in a separate room. The appellant states that this would be a shared kitchen that would be available for use by other residents of the HMO. The proposed internal layout supports this view, as the kitchen is accessed from a shared stairwell, and there is no evidence to suggest that access to, or use of, the kitchen would be restricted to the occupiers of the new en-suite bedroom. The layout plan further shows that no part of the building would provide a

¹ *Gravesham BC v SSE and Another* [1984] 47 P&CR 143

separate self-contained dwelling with all of the facilities for day-to-day private domestic existence.

12. If the appellant were to later subdivide the building so that it contains one or more flats, planning permission would probably be required for the material change of use. If I grant a LDC for the proposed dormer and skylights, that would not prevent the Council from enforcing against any material change of use undertaken without the requisite permission. However, I must deal with this LDC application on the basis of the submitted plans and I cannot speculate as to what change of use may or may not take place in the future.
13. I find that, on the balance of probabilities, the appeal building is used as a C4 HMO now, it would remain in such use if the proposed dormer and skylights are erected or installed, and the proposed dormer and skylights would therefore be granted planning permission under Article 3(1) and Schedule 2, Part 1, Classes B and C (respectively) of the GPDO.
14. In making that finding, I have noted that the Council introduced an Article 4 direction on 1 November 2022 such that any change of use from a single dwellinghouse (use class C3) to a C4 HMO would require express planning permission. However, there is no dispute that the use of the appeal building as a C4 HMO began before that date, since it was the existing use when the LDC application was made some seven months earlier.

Conclusion

15. I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a loft conversion, erection of a rear dormer and skylights to the front 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 as amended to allow the appeal.

J M Tweddle

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 9 April 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 operations as depicted on plans and drawings: 2021/005/05; 2021/004/05; 2021/003/14; 2021/002/14; and, 2021/001/14 would have been permitted by the provisions of Article 3(1) and Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

J M Tweddle

Inspector

Date: 24 June 2024

Reference: APP/T5150/X/22/3310949

First Schedule

A loft conversion, erection of rear dormer and skylights to the front.

Second Schedule

Land at 34 Bathurst Gardens, London NW10 5JA

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: 24 June 2024.

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

Land at: 34 Bathurst Gardens, London NW10 5JA

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Scale: Not to Scale

