



Appeal Decision

by **A U Ghafoor BSc (Hons), MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10th July 2024

Appeal Ref: APP/Y5420/X/23/3332707

253 Philip Lane, Tottenham, London, N15 4AE

- 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 Christopher Raymond against the decision of the Council of the London Borough of Haringey.
 - The application ref HGY/2023/2376, dated 5 September 2023, was refused by notice dated 1 November 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 demolition of an existing conservatory and the erection of a single storey rear extension.
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Decision

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

Preliminary Matter

2. Given this appeal turns on the interpretation and application of law to the proposed development, there is no need to conduct a site visit. A representative of the Inspector has made a recommendation set out below and to which the Inspector has had regard before deciding the appeal.

Main Issue

3. Whether the Council's refusal to issue a certificate was well founded.

Reasons for the Recommendation

4. The Council's reason for refusal was that the proposal would fail to comply with the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO 2015") Schedule 2, Part 1, Class A.
5. To be successful in this appeal the appellant should show, on the balance of probabilities, that the development would fall within the provisions of the GPDO 2015 Schedule 2, Part 1, Class A ("Class A") in that the proposed development would comply with its limitations. In particular Class A (i).
6. The Council have measured the eaves height from the ground level to the rear of the proposed extension. The appellant does not dispute the measurement itself, just the location of where the measurement was taken, stating that the measurement could be taken from the ground level adjacent to the original house rear elevation which would comply with the GPDO 2015 Class A. This level is slightly higher due to a gradual slope in the ground level. A gap exists

between the boundary to No 255 and the existing conservatory. Furthermore, there is a gap between the boundary treatment and the development at No 255.

7. Article 2(2) of the GPDO 2015 explains that *'any reference in this Order to the height of a building or of plant or machinery is to be construed as a reference to its height when measured from ground level'* – and that *'ground level' in this context means 'the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground...is not uniform, the level of the highest part of the surface of the ground adjacent to it'*.
8. Consequently, as I read plan 169/10 Rev B, the Council have measured the height from an incorrect location. The ground immediately adjacent to the building is not uniform and read from the highest point the proposed development would comply with the GPDO 2015 Class A.

Conclusion and Recommendation

9. For the reasons given above I conclude, on the balance of probabilities, that the Council's refusal to grant a LDC in respect of the demolition of an existing conservatory and the erection of a single storey rear extension was not well-founded and that the appeal should succeed.

S Wilson

APPEAL PLANNING OFFICER

Inspector's Decision

10. I have considered all the submitted evidence and my representative's report and on that basis the appeal allowed.

A U Ghafoor

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 5 September 2023 the proposed development 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 development would comply with the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 1, Class A.

Signed

A U Ghafoor

Inspector

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First Schedule

Demolition of an existing conservatory and the erection of a single storey rear extension.

Second Schedule

Land at 253 Philip Lane, Tottenham, London, N15 4AE

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 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: 10th July 2024

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Scale: Not to Scale

