



Appeal Decision

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2024

Appeal Ref: APP/E5330/X/24/3342171

155 Green Lane, Eltham, Greenwich, LONDON SE9 3SY

- 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 Xiaowei Yu against the decision of the Council for the Royal Borough of Greenwich.
 - The application ref 24/0437/CP, dated 11 February 2024, was refused by notice dated 8 April 2024.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended ('the Act').
 - The development for which a certificate of lawful use or development is sought is Loft Conversion into habitable space incorporating rear Dormer, and Hip to Gable wall extension front slope Velux lights, removal of flank wall chimneys and erection of Outbuilding at rear garden at 155 Green Lane London SE9 3SY.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the appeal relates to a certificate of proposed use, from the submissions I find that it is possible to determine it on the basis of the submitted information without a site visit. Therefore, and as no-one would be prejudiced, I have made my decision on this basis.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue a certificate was well-founded.

Reasons

4. The evidence shows that 155 Green Lane ('No 155') is a two-storey, semi-detached property with a long rear garden.
5. When a person wishes to ascertain whether any operations that are proposed to be undertaken in, on, over or under land would be lawful, he can make an application to a local planning authority under the terms of section 192(b) of the Act. When, as here, an application is refused, they can appeal against the decision under the terms of s195 of the Act. The onus lies with the Appellant to demonstrate the lawfulness of what is applied for.
6. In respect of the operational development to the roof of the property, the evidence shows that the hip to gable works have already been carried out. As such, they cannot be assessed as part of a s192 application. If it is the intention of the Appellant to have the lawfulness of those works decided, as seems to be the case, he would have to make an application for a certificate of

lawfulness under s191 of the Act, which relates to existing development. There is nothing in the text of either s191 nor s192 that would allow for a 'hybrid' application of existing and proposed developments to be made.

7. Therefore, as the lawfulness of the hip to gable extension would have to be determined under s191, I cannot determine the lawfulness of the proposed dormer extension. The reason for this is that a significant portion of the proposed dormer would be added to the area of roof that has been created by the hip to gable extension. In the absence of evidence showing the lawfulness of the latter works, I cannot determine the lawfulness of the proposed dormer.
8. This is not the same reasoning for refusing the application that was given by the Council. However, my role is to assess the lawfulness of the scheme and I find that this has not been demonstrated. As I have found this to be the case, there is no need to assess the Council's reason for refusal.
9. In respect of the outbuilding that is proposed, very little information has been provided. Save for what is shown on the drawings, this is limited to a statement that it would have a single storey with a height not exceeding 2.5m in height and that it would not cover more than 50% of the garden area.
10. I can safely assume that the case that is being made is that the outbuilding is lawful by reason of its compliance with the terms of Class E of Schedule 1, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('GPDO'). Amongst other things, this states that the provision within the curtilage of a dwellinghouse of certain buildings required for a purpose incidental to the enjoyment of the dwellinghouse would be permitted development and, as such, no planning application would be required.
11. The drawings show a building that would comply with the size and locational constraints of Class E. However, it does not fulfil the requirement to demonstrate why it is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. It is necessary for this to be demonstrated prior to a certificate being issued. As this has not been done, and notwithstanding that the Council did not refuse to issue a certificate for reasoning relating to this outbuilding, the appeal also fails for this reason.
12. Although my reasons for refusing to issue a certificate do not accord with those of the Council, on the basis of the evidence before me its decision to refuse to issue a certificate was nonetheless well-founded.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Loft Conversion into habitable space incorporating rear Dormer, and Hip to Gable wall extension front slope Velux lights, removal of flank wall chimneys and erection of Outbuilding at rear garden at 155 Green Lane London SE9 3SY was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

R Curnow

INSPECTOR