The Planning Inspectorate

Appeal Decision

Site visit scheduled, but did not occur, on 18 December 2012

by Antony Fussey JP BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 January 2013

Appeal Ref: APP/U5930/X/12/2176428
15 Browns Road, London E17 4RN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr J Ramchurn against the decision of the Council of the London Borough of Waltham Forest.
- The application Ref 2012/0049/CLP, dated 9 December 2011, was refused by notice dated 14 February 2012.
- 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 main loft and rear wing loft conversion and a ground floor rear extension.

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 considered to be lawful.

Preliminary Matters

2. The appellant was not represented at the site visit at the time arranged, and it was not possible to view the positions of the proposed works from public viewpoints. However I am satisfied that the written information submitted by the parties enables me to assess the situation and to reach a decision without a site inspection: the Council's representative agreed.

3. The application was in the terms set out above, but the Council's decision only referred to "loft conversions with rear dormer window". I have determined the appeal on the basis of development described in the application.

Reasons

4. At present, no. 15 is a 2-storey terraced house with a small 2-storey outshut on its rear, occupying about half the elevation's width. The outshut has a monopitched roof descending from a ridge on the boundary with the adjacent property to eaves which are slightly lower than those of the main house. The proposal includes 2 single storey extensions, one extending from the house's main wall to the existing line of the outshut's rear wall, the other extending the outshut itself rearwards. These 2 elements are not in contention.

5. It is also proposed to build an 'L'-shaped flat roofed dormer occupying most of the main house's rear roof slope, and the roof slope of the outshut. This would involve building over the line of the main house's eaves where they are currently exposed above the line of the outshut's monopitched roof.

6. Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO) permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to provisos and conditions. That relevant here is condition B2(b), requiring "*other than in the case of a hip-to-gable enlargement, the edge of the enlargement closest to the eaves of the original roof shall, so far as practicable, be not less than 20 centimetres from the eaves of the original roof*".

7. The Council argues that the position of the main roof's eaves where the 2 dormers would converge means that the 20cm set back would not be achieved. Its statement includes drawings of 2 single dormers, each set back more than 20cm from this line, and of a double dormer with an indent at the line, which also meets this distance. It contends that both situations would be lawful.

8. The Council believes that the 20cm should be measured from the points where vertical lines continuing upwards from the house's external walls intersect the roof plane, so ignoring that part of the roof which protrudes past the lines. This approach was taken, and illustrated, by a colleague who determined an appeal relating to a site in Isleworth (APP/F5540/X/09/2112522) on 1 February 2010.

9. However that August the Department for Communities and Local Government issued Technical Guidance on "Permitted Development for Householders". This used the same line when measuring the height of the eaves for other purposes in the GPDO, but says in Class B "*the measurement of 20 centimetres should be made along the original roof slope from the outermost edge of the eaves (the edge of the tiles or slates) to the edge of the enlargement*". Even so, this does not help the appellant because the 20cm measurement would still not be met where the proposed dormer would extend across the existing main eaves.

10. The GPDO requires compliance with the 20cm measurement "*so far as practicable"* - so provides for a relaxation. It does not explain this phrase, but the Technical Guidance says "*this 20cm set back will be required unless it can be demonstrated that this is not possible due to practical or structural considerations. One circumstance where it will not prove practical to maintain this 20cm distance will be where a dormer on a side extension of a house joins an existing, or proposed, dormer on the main roof of the house*". The Guidance's wording is clear, saying that in this situation it <u>will</u> not be practicable to achieve this distance, not it <u>may</u> not be practicable.

11. It seems to me that the appellant's proposal accords with this situation and so that, in line with the Guidance, it is not practicable to achieve the 20cm measurement from the eaves of the original roof. Condition B2 is therefore met and the proposal would be permitted development under Class B of Part 1 of Schedule 2 of the GPDO.

12. 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 main loft and rear wing loft conversion and a ground floor rear 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 as amended.

Antony Fussey

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 9 December 2011 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched 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 reasons:

1. The proposed single storey extensions would be permitted development under the terms of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

2. The proposed loft conversions and dormers would be permitted development under the terms of Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), as interpreted by Technical Guidance on "Permitted Development for Householders" issued by the Department for Communities and Local Government in August 2010.

Signed

Antony Fussey
Inspector

Date 4 January 2013
Reference: APP/U5930/X/12/2176428

First Schedule

A main loft and rear wing loft conversion and a ground floor rear extension as shown on drawing numbers A01, A02, A03, A04, A05, A06 and A07, received by the local planning authority on 13 December 2011 as part of application reference 2012/0049/CLP.

Second Schedule

Land at 15 Browns Road, London E17 4RN

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.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 4 January 2013

by Antony Fussey JP BSc(Hons) DipTP MRTPI

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Not to Scale

