

Section '3' - Applications recommended for PERMISSION, APPROVAL or CONSENT

Application No : 13/02589/PLUD

Ward:
Copers Cope

Address : 68 Copers Cope Road Beckenham BR3
1RJ

OS Grid Ref: E: 536940 N: 170666

Applicant :

Objections : YES

Description of Development:

Single storey side and two storey rear extensions. Installation of rear and side dormers and other roof alterations

CERTIFICATE OF LAWFULNESS FOR A PROPOSED DEVELOPMENT

Key designations:

Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
Green Chain
London City Airport Safeguarding
London City Airport Safeguarding Birds
Local Distributor Roads
Metropolitan Open Land
Open Space Deficiency

Proposal

Update

Members will recall that this application was presented to the Plans Sub Committee held on the 19th September 2013.

The application was deferred without prejudice to seek further confirmation of the lawfulness of the proposed development and a legal briefing with clarification on a certificate of proposed use or development as noted in the Town and Country Planning Act 1990.

Accordingly, the Legal comments are as follows:

"The Town and Country Planning Act 1990 (TCPA 1990) section 192 relates to Certificate of Lawfulness of proposed use or development (CLOPUD).

The above section is relevant to the agenda item relating to 68 Copers Cope Road, Beckenham.

Please note that an application for a CLOPUD is not a precondition for a permitted development right. There is no obligation to acquire a Lawful Development Certificate. However individuals may apply for a certificate if they so wish. In the above matter the Chief Planner has set out the relevant General Permitted Development Order(GPDO)(relevant sections of the GPDO are attached), and why he believes the applicants adhere to the requirements of the certificate as noted in this report. The Local Planning Authority (LPA) needs to refer to the criteria on the GPDO and decide whether or not to grant the certificate. If it is minded to refuse the application the LPA should clearly identify in its reasons what areas of the GPDO are not being met that have led to a refusal.

The procedure under section 192 of the TCPA 1990 for the (LPA) to issue a CLOPUD needs to establish that:

- a) A proposed use is lawful
- b) Any operations that are proposed in, on, over or under the land are lawful.

The local authority makes a decision of whether or not to grant a CLOPUD essentially as to the legality of the proposed use or works. This is substantially different from a decision on whether or not to grant planning permission, whereby, the authority would base on the planning merits of a particular application. Furthermore, no conditions can be attached to a CLOPUD as in a planning permission.

The effect of a Lawful Development Certificate granted under section 192 (4): "Provides that the lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness".

A CLOPUD is conclusive as to the lawfulness of the matters to which it deals. In which case, a CLOPUD may be revoked if material information misleads by withholding or providing false information or where a statement or document used in the application (section 193(7)).

There is no requirement for notification of the application to other owners or for publicising it, as the matters determined are solely on evidence and law. A Local Authority does not have the power to modify the description of the use or development when granting a CLOPUD. However, it can request for further details in any application or it may refuse to grant the certificate. However, it is important for the Local authority to act reasonably. There are relevant legal authorities which substantiate the point of acting reasonably.

The Onus of proof for a CLOPUD is on the applicant, and it is determined on a balance of probability rather than beyond reasonable doubt.

Enforcing Planning Control Circular 10/1997 Annex 8 states in Paragraph 8.26 Subsection (2) of section 192 ..."It provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application. The burden of proof is firmly on the applicant. He will have to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission he wishes to make to satisfy the LPA that a LDC should be granted for the proposal.

Under section 195 and 196 of the 1990 Act, the applicant has a right of appeal to the Secretary of State on a point of law. "The parties to a Lawful Development Certificate appeal are normally expected to meet their own expenses. Unlike litigation, costs do not normally "follow the event" of the appeal and are only awarded, on an application, against a party who behaved "unreasonably" in the appeal process." The applicant, if successful would be in a win-win situation, to both have costs awarded against the Council and retain the lawful development.

The above provides an overview of a Certificate of Lawfulness of proposed use or development (CLOPUD)."

This application is for a Certificate of Lawfulness for a Proposed Development for single storey side and two storey rear extensions, Installation of rear and side dormers and other roof alterations

The site relates to a detached two storey property located on the eastern side of Copers Cope Road. Properties of similar design and size characterise the area. The proposal is for a Hip to gable roof alteration and rear dormer to facilitate loft conversion.

The applicant considers that these works fall within the tolerances of 'permitted development' and is seeking a Certificate of Lawfulness from the Council to confirm this.

Comments from Local Residents

Nearby owners/occupiers were notified of the application as a matter of courtesy. At the time of writing 3 responses had been received, which can be summarised as follows:

- overshadowing and loss of light
- loss of privacy
- size and scale inappropriate
- would set a precedent

- extensions are excessive and extrusive.
- affect to the streetscene.
- loss of parking.
- not compliant with side space policy.
- extension would protrude further than other building lines.

The full text of the comments received are available to view on the file.

Comments from Consultees

No consultations were made in respect of this application.

Planning History

13/01150/FULL6 - First floor side extension, application was permitted.

13/01602/FULL6 - Part one/two storey rear extension, roof alterations, elevational alterations and conversion of garage to habitable accommodation, application was refused.

13/01625/FULL6 - Part one/two storey rear extension, roof enlargement and alterations including increase in ridge height, side and rear dormers, application was refused.

Planning Considerations

This application is a legal determination and requires the Council to consider whether the proposal falls within the parameters of permitted development under Classes A, B and C of Schedule 2, Part 1 of the General Permitted Development Order 1995 (as amended).

Matters relating to the planning merits of the proposal are not relevant in this determination.

This application has been called-in to Committee by one of the local Ward Members.

Conclusions

Class A permits the enlargement of a dwellinghouse. The proposed extensions appear to fit in with the permitted development requirements of the General Permitted Development Order (as amended)

Relevant issues being:

- the extension will not exceed 50% of the total curtilage of the original house
- the height of extension will not exceed the height of the highest part of the dwellinghouse
- no deeper than 3 metres

Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. In this instance, the proposed loft conversion would fall within the scope of Class B and is considered to be permitted development for the following reasons:

- the extensions will not exceed the height of the of the highest part of the existing roof
- the extensions would not extend beyond the plane of the existing roof slope which forms the principal elevation and fronts a highway
- the resulting extensions' volume falls within 50 cubic metres allowed in the case of a semi-detached dwelling (a check of the measurements indicates the volume would be around 41.4 cubic metres)
- the house is not sited within a conservation area
- the dormer provides a minimum of 0.2m separation from the eaves of the dwelling

The development is also subject to Condition B.2 (a) where the materials used in any exterior work shall be of a similar appearance to those used in the construction of the exterior of the existing dwelling; this has been confirmed by the submitted plans.

Class C covers other alterations such as the installation of roof lights. In this instance, the proposed loft conversion would fall within the scope of Class C, and is considered to be permitted development for the following reasons:

- the proposed rooflights to the front elevation will not project more than 150mm from the roof slope.

Having regard to the above and bearing in mind that the planning merits of the proposal will not be a determining factor in this case. It would appear that the works will fall within the tolerances of permitted development accordingly it is recommended that a Certificate of Lawfulness be granted.

RECOMMENDATION: CERTIFICATE BE GRANTED

- 1 The proposed development is permitted by virtue of Classes A, B and C, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

The Town and Country Planning (General Permitted Development) Order 1995

1995 No. 418

SCHEDULE 2

PART 1 DEVELOPMENT WITHIN THE CURTILAGE OF A DWELLINGHOUSE

Class A

A. Permitted development

The enlargement, improvement or other alteration of a dwellinghouse.

A.1 Development not permitted

Development is not permitted by Class A if—

(a) the cubic content of the resulting building would exceed the cubic content of the original dwellinghouse—

(i) in the case of a terrace house or in the case of a dwellinghouse on article 1(5) land, by more than 50 cubic metres or 10 %, whichever is the greater,

(ii) in any other case, by more than 70 cubic metres or 15%, whichever is the greater,

(iii) in any case, by more than 115 cubic metres;

(b) the part of the building enlarged, improved or altered would exceed in height the highest part of the roof of the original dwellinghouse;

(c) the part of the building enlarged, improved or altered would be nearer to any highway which bounds the curtilage of the dwellinghouse than—

(i) the part of the original dwellinghouse nearest to that highway, or

(ii) any point 20 metres from that highway,

whichever is nearer to the highway;

(d) in the case of development other than the insertion, enlargement, improvement or other alteration of a window in an existing wall of a dwellinghouse, the part of the building enlarged, improved or altered would be within 2 metres of the boundary of the curtilage of the dwellinghouse and would exceed 4 metres in height;

(e) the total area of ground covered by buildings within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

(f) it would consist of or include the installation, alteration or replacement of a satellite antenna;

(g) it would consist of or include the erection of a building within the curtilage of a listed building; or

(h) it would consist of or include an alteration to any part of the roof.

In the case of a dwellinghouse on any article 1(5) land, development is not permitted by Class A if it would consist of or include the cladding of any part of the exterior with stone, artificial stone, timber, plastic or tiles.

A.3 Interpretation of Class A

For the purposes of Class A—

(a) the erection within the curtilage of a dwellinghouse of any building with a cubic content greater than 10 cubic metres shall be treated as the enlargement of the dwellinghouse for all purposes (including calculating cubic content) where—

(i) the dwellinghouse is on article 1(5) land, or

(ii) in any other case, any part of that building would be within 5 metres of any part of the dwellinghouse;

(b) where any part of the dwellinghouse would be within 5 metres of an existing building within the same curtilage, that building shall be treated as forming part of the resulting building for the purpose of calculating the cubic content.

Class B

B. Permitted development

The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

B.1 Development not permitted

Development is not permitted by Class B if—

(a) any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof;

(b) any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which fronts any highway;

(c) it would increase the cubic content of the dwellinghouse by more than 40 cubic metres, in the case of a terrace house, or 50 cubic metres in any other case;

(d) the cubic content of the resulting building would exceed the cubic content of the original dwellinghouse—

(i) in the case of a terrace house by more than 50 cubic metres or 10%, whichever is the greater,

(ii) in any other case, by more than 70 cubic metres or 15%, whichever is the greater, or

(iii) in any case, by more than 115 cubic metres; or

(e) the dwellinghouse is on article 1(5) land.

Class C

C. Permitted development

Any other alteration to the roof of a dwellinghouse.

C.1 Development not permitted

Development is not permitted by Class C if it would result in a material alteration to the shape of the dwellinghouse.

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"This plan is provided to identify the location of the site and should not be used to identify the extent of the application site"

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