

Committee	PLANNING COMMITTEE B	
Report Title	159 Woodyates Road, London, SE12 9JJ	
Ward	Grove Park	
Contributors	Thomas Simnett	
Class	PART 1	01 07 2021

<u>Reg. Nos.</u>	DC/21/121749
<u>Application dated</u>	12 th May 2021
<u>Applicant</u>	Mr Morgan (Agent) on behalf of Mrs Whittington (Applicant)
<u>Proposal</u>	Lawful Development Certificate (Proposed) in respect to the construction of a hip to gable loft extension and a rear dormer roof extension at 159 Woodyates Road, SE12, together with three front roof lights.
<u>Background Papers</u>	N/A
<u>Designation</u>	HMO – Article 4 Direction
<u>Screening</u>	N/A

1 SUMMARY

- 1 This application for a Certificate of Lawfulness is required to be heard at Planning Committee in accordance with Lewisham's Constitution, as the application is made on behalf of the partner of an employee of the Planning Service. The Director of Planning has therefore determined that the application should be decided at committee in line with Lewisham's Protocol on Planning and Lobbying.

2 SITE AND CONTEXT

- 2 This application relates to a two-storey end-of-terraced single-family dwellinghouse located on the eastern side of Woodyates Road.
- 3 The property features a single storey side extension which is used as a garage to the front and utility to the rear and a small shed to the rear garden.
- 4 The application property is not located within a Conservation area and nor is it a Listed Building or located close to one. The property is however subject to an Article 4 Direction removing permitted development rights for the change of use from Single family dwelling house (C3) to a small HMO (C4).

3 RELEVANT PLANNING HISTORY

5 **DC/21/121751:** Lawful Development Certificate (Proposed) in respect to the construction of a single storey rear side extension at 159 Woodyates Road, SE12 together with the conversion of garage to habitable use including alterations to front elevation. **Granted 19 May 2021**

3.1 THE PROPOSAL

6 This application is a **Lawful Development Certificate** (Proposed) in respect of the construction of a hip to gable loft extension and a rear dormer roof extension at 159 Woodyates Road, SE12, together with three front roof lights.

4 CONSULTATION

4.1 PRE-APPLICATION ENGAGEMENT

7 As the application is for a Certificate of Lawfulness, no pre-application engagement is required.

4.2 APPLICATION PUBLICITY

8 As the application is for a Certificate of Lawfulness, no public consultation has been undertaken.

4.3 CONSULTATION

9 As the application is a certificate of Lawfulness, no internal or external consultation has been undertaken.

5 POLICY CONTEXT

5.1 LEGISLATION

Certificates of Lawfulness

10 Anyone can apply to the local planning authority to obtain a decision on whether a proposed use or development is lawful for planning purposes or not. If the Local Planning Authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. An application needs to describe precisely what is being applied for and the land to which the application relates.

11 The decision maker must consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. **Planning merits are not relevant at any stage in this particular application.**

12 In this case, the applicant is seeking to confirm by way of the Certificate of Lawfulness application that the proposed hip-to-gable roof extension and roof lights meets the limitations and conditions of Permitted Development, as is set out below.

Lewisham's Protocol on Planning and Lobbying

- 13 The Protocol on Planning and Lobbying forms part of the Lewisham's constitution and sets out that applications by Members or Officers shall follow particular procedures.
- 14 The Constitution notes that the impartiality of the planning process requires particular care when dealing with an application by anyone who might ordinarily be involved in the planning process. So, whenever any officer who might be involved in the planning process submits an application to the Council for himself/herself or on behalf of any other person, they will:
- Inform both the Director of Planning and the Council's Monitoring Officer
 - Take no part in processing or determining the application.
- 15 The Protocol also states that the Director of Planning will ensure that all such applications are determined at the appropriate committee meeting and not under any delegated powers.
- 16 In this case, the Director of Planning and the Monitoring Officer have been informed and the Planning Officer has taken no part in the processing or determining the application. This Committee Report informing the recommendation has been drafted by an officer in a separate team to the employee.
- 17 NATIONAL POLICY & GUIDANCE
- National Planning Policy Framework 2019 (NPPF)
 - National Planning Policy Guidance 2014 onwards (NPPG)
 - The Town and Country Planning (General Permitted Development) (England) Order 2015

5.2 SUPPLEMENTARY PLANNING GUIDANCE

- Permitted Development Rights for Householders Technical Guidance – Ministry of Housing, Communities and Local Government (MHCLG) – September 2019.

6 LEGAL CONSIDERATIONS

- 18 The main issue is:
- The development proposal's conformity with the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
- 19 The Town and Country Planning (General Permitted Development) Order 2015 (as amended).
- Schedule 2, Part 1, Class B of The Town and Country Planning (General Permitted Development) Order 2015 (as amended) sets out the limits for the enlargement of a dwellinghouse, consisting of an addition or alteration to its roof.
 - Schedule 2, Part 1, Class C of The Town and Country Planning (General Permitted Development) Order 2015 (as amended) sets out the limits for any other alteration to roof of dwellinghouse.

The tables below sets out the Permitted Development criteria and confirms the proposed roof extension meets the relevant requirement of Class B and Class C. Class B relates to the hip-to-gable element of the proposal and Class C to the rooflights.

B	Permitted development: The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.	
B.1	Development is not permitted by Class B if:	
(a)	permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA or Q of Part 3 of this Schedule (changes of use);	N/A
(b)	any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof	No
(c)	any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway	No
(d)	the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than—	
	(i) 40 cubic metres in the case of a terrace house, or	No
	(ii) 50 cubic metres in any other case;	No
	VOLUME CALCULATION: Hip to gable $((4.1 \times 8.0 \times 2.7) / 6) = 14.76\text{m}^3$ Rear dormer $((3.4 \times 6.1 \times 2.3) / 2) = 23.9\text{m}^3$	38.66m ³
(e)	it would consist of or include—	
	(i) the construction or provision of a verandah, balcony or raised platform, or	No
	(ii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe; or	No
(f)	the dwellinghouse is on article 2(3) land.	No
B.2	Development is permitted by Class B subject to the following conditions:	
(a)	the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;	No evidence, an informative would be added to this effect.
(b)	the enlargement must be constructed so that—	
	(i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—	
	(aa) the eaves of the original roof are maintained or reinstated; and	Yes
	(bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the	Yes

	eaves, measured along the roof slope from the outside edge of the eaves; and	
(ii)	other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse; and	Yes
(c)	any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse must be--	
(i)	obscure-glazed, and	N/A
(ii)	non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed; and	N/A
Interpretation of Class B:		
B.3	For the purposes of Class B, “resulting roof space” means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this Class or not.	N/A
B.4	For the purposes of paragraph B.2(b)(ii), roof tiles, guttering, fascias, barge boards and other minor roof details overhanging the external wall of the original dwellinghouse are not to be considered part of the enlargement.	

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The proposed roof extension **would comply** with Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

C	Permitted development: Any other alteration to the roof of a dwellinghouse	
C.1	Development is not permitted by Class C if:	
(a)	permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA or Q of Part 3 of this Schedule (changes of use);	N/A
(b)	the alteration would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof	No
(c)	it would result in the highest part of the alteration being higher than the highest part of the original roof; or	No
(d)	it would consist of or include—	
(i)	the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or	No
(ii)	the installation, alteration or replacement of solar photovoltaics or solar thermal equipment	No
C.2	Development is permitted by Class C subject to the following conditions:	
(a)	any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse must be--	
(i)	obscure-glazed, and	N/A

(ii)	non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed	N/A
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22 The proposal to include the rooflights to the front roof slope **would comply** with Schedule 2, Part 1, Class C of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

23 **LOCAL FINANCE CONSIDERATIONS**

24 There are no local finance consideration in this case.

25 **EQUALITIES CONSIDERATIONS**

26 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

27 In summary, the Council must, in the exercise of its function, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and persons who do not share it.

28 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

29 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

30 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty
- Equality objectives and the equality duty

- Equality information and the equality duty

31 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>

32 The legal issues set out above do not include any factors that relate specifically to any of the equalities categories set out in the Act, and therefore it has been concluded that there is no impact on equality.

7 HUMAN RIGHTS IMPLICATIONS

33 In determining this application the Council is required to have regard to the provisions of the Human Rights Act 1998. Section 6 of the Human Rights Act 1998 prohibits authorities (including the Council as local planning authority) from acting in a way which is incompatible with the European Convention on Human Rights. "Convention" here means the European Convention on Human Rights, certain parts of which were incorporated into English law under the Human Rights Act 1998. Various Convention rights are likely to be relevant including

- Article 8: Respect for your private and family life, home and correspondence
- Protocol 1, Article 1: Right to peaceful enjoyment of your property

34 This report has outlined the consultation that has been undertaken on the planning application and the opportunities for people to make representations to the Council as Local Planning Authority.

35 Members need to satisfy themselves that the potential adverse amenity impacts are acceptable and that any potential interference with the above Convention Rights will be legitimate and justified. Both public and private interests are to be taken into account in the exercise of the Local Planning Authority's powers and duties. Any interference with a Convention right must be necessary and proportionate. Members must therefore, carefully consider the balance to be struck between individual rights and the wider public interest.

36 This application has the legitimate aim of providing a home extension. The rights potentially engaged by this application are not considered to be unlawfully interfered with by this proposal.

8 CONCLUSION

37 This application has been considered against relevant Permitted Development (PD) limitations and conditions. The volume of dormer roof is below 50 cubic metres and the materials are proposed to match the existing dwelling. Other relevant PD criteria are met. The roof lights are also compliant.

38 The proposal would comply with Class [B] and [C] of Part 1, Schedule 2 of the Town and Country planning (General Permitted Development) Order 2015 (as amended) and is Permitted Development.

9 RECOMMENDATION

39 That the Committee resolve to **GRANT** the Lawful Development Certificate.