



# Appeal Decision

Site visit made on 21 December 2009

by **Ian Currie BA MPhil MRICS MRTPI**

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

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**Decision date:  
13 January 2010**

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## Appeal Ref: **APP/N5090/X/09/2108111**

### **77 Platts Lane, Hampstead, London NW3 7NL**

- 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 B J Reeves against the decision of the Council of the London Borough of Barnet.
- The application (Ref:- F/01371/09), dated 27 April 2009, was refused by notice dated 9 June 2009.
- 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 loft conversion with dormer window to rear addition roof, involving raising party wall parapet (extensions to roof including dormer window to rear projection to facilitate a loft conversion).

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### **Decision**

1. I allow the appeal and I attach to this decision a certificate of lawful use or development describing the proposed operation, which I consider to be lawful.

### **Main Issue**

2. I consider that the main issue in this appeal is whether the refusal of a lawful development certificate (LDC) for the carrying out of a loft conversion, with a dormer window to a rear addition roof involving raising a party wall parapet at 77 Platts Lane, London NW3, was well founded.

### **Reasons**

3. This application to the local planning authority for a lawful development certificate, for the installation of a loft conversion, with a dormer window to a rear addition roof involving raising party wall parapet at 77 Platts Lane, London NW3, was made after 1 October 2008. Therefore, the provisions of the Schedule to the Town & Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008 apply to the circumstances of this case. Class B of the Schedule, which replaced the former Part 1 of Schedule 2 to the 1995 Order, describes the enlargement of a dwellinghouse consisting of an addition or alteration to its roof as permitted development i.e. development granted planning permission by virtue of the provisions of Article 3(1) of the Town & Country Planning (General Permitted Development) Order 1995 (GPD0).
  4. Article 3(2) states that any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2. The limitations and conditions imposed upon Class B in the Schedule to the 2008 Amendment
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Order are extensive. The limitations in paragraph B.1 include restrictions to the height of the roof alterations not exceeding the highest part of the roof, the alterations not extending the plane of the roof slope incorporated in the dwelling's principal elevation and the cubic content of the alterations to the roof exceeding the cubic content of the original roofspace by 40m<sup>3</sup> in this mid-terrace house, which is not in Article 1(5) land. All of these limitations are satisfied.

5. The conditions in paragraph B.2 are similarly met. The proposed materials are similar to those used in the construction of the original house and the edge of the roof alteration closest to the original eaves is shown to be more than 20cm from the eaves of the original roof on the submitted drawings, which similarly indicate the windows in the side elevation to be obscure glazed and fixed shut. The local planning authority accepts that all of these conditions and limitations are satisfied. However, it points out that the Schedule to the 2008 Amendment Order is headed, "*Development within the Curtilage of a Dwellinghouse*". It contends that to build up the party wall with 79 Platts Lane, by raising the combined thickness of the joint wall to the two properties, would constitute development not falling within the curtilage of 77 Platts Lane, would therefore fail to comply with the heading to the Schedule and would thereby cause the proposed roof alterations in their entirety to require planning permission.
6. When the application for the LDC was made to the Council, an appeal decision (Reference APP/Q5300/X/01/106324), dated 17 September 2001 and made by one of my colleagues, was submitted. This related to an application made under section 192(1)(b) of the amended 1990 Act for a loft conversion at 143 Ordnance Road in the adjoining London Borough of Enfield, where, as in this instance, the only reason given for the refusal of a certificate was based on the local planning authority's belief that the extension to the party wall would not fall within Class B of what was then Part 1 of Schedule 2 to the Town & Country Planning (General Permitted Development) Order 1995.
7. The Inspector quoted extensively from several authorities (*Methuen-Campbell v Walters* [1979] 1 QB 525, *Dyer v Dorset CC* [1988] 3 WLR 213, *Attorney-Gen ex rel Suttcliffe & others v Calderdale MBC* [1983] JPL and *McAlpine v Secretary of State for the Environment* [1995] JPL B43). In doing so, he concluded that, on the strength of the final case cited in particular, a curtilage comprised three defining characteristics. Firstly, it occupied a small area around a building, secondly it was intimately associated with that building and thirdly it had to be regarded as part of one enclosure with the house. Where party walls are concerned, the Inspector reached the conclusion that two adjoining curtilages can overlap each other, where a party wall shared by two contiguous properties could result in the partial collapse of both if the wall were removed. He could see no reason why, with a party wall such an integral part of two dwellinghouses, their two curtilages could not overlap, because such small areas were involved, and neither can I.
8. I appreciate that Inspectors cannot make decisions that are binding on their colleagues or that equate in any way to judicial authority. However, I note that the Inspector in the Enfield decision was a practising solicitor, whereas I am not legally qualified in any way. In *North Wiltshire DC v Secretary of State for the Environment & Clover* [1992] JPL 955 the Court of Appeal held that an Inspector was free upon consideration to disagree with the judgement of another but before doing so he ought to have regard to the importance of

consistency and to give his reasons for departure from a previous decision. I can find no reason to contradict my predecessor in this area of planning law.

9. The only significant change in the law in the intervening period between these two decisions was the replacement of Part 1 of Schedule 2 to the Town & Country Planning (General Permitted Development) Order 1995 by the Schedule to the Town & Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008. However, both the original Part 1 of Schedule 2 and its 2008 replacement are headed "*Development within the Curtilage of a Dwellinghouse*", the only matter at issue between the parties in both instances. For the reasons set out above, I concur with my colleague in the Enfield LDC case. I find that raising of the party wall between 77 and 79 Platts Lane as a joint building exercise would be part of the development permitted by Part 1 of Schedule 2 to the Town & Country Planning (General Permitted Development) Order 1995 as amended, within the curtilage of the dwellinghouse at 77 Platts Lane, London NW3 and a lawful development certificate should have been issued by the local planning authority to that effect.

### **Conclusions**

10. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development, in respect of a loft conversion with a dormer window to a rear addition roof, involving raising a party wall parapet (extensions to roof including dormer window to rear projection to facilitate a loft conversion) at 77 Platts Lane, Hampstead, London NW3 7NL, was not well-founded and that the appeal should succeed. I shall exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and I issue a lawful development certificate accordingly.

*Ian Currie*

Inspector



# Plans

This are the plans referred to in the Lawful Development Certificate dated:  
13/01/2010

by **Ian Currie BA MPhil MRICS MRTPI**

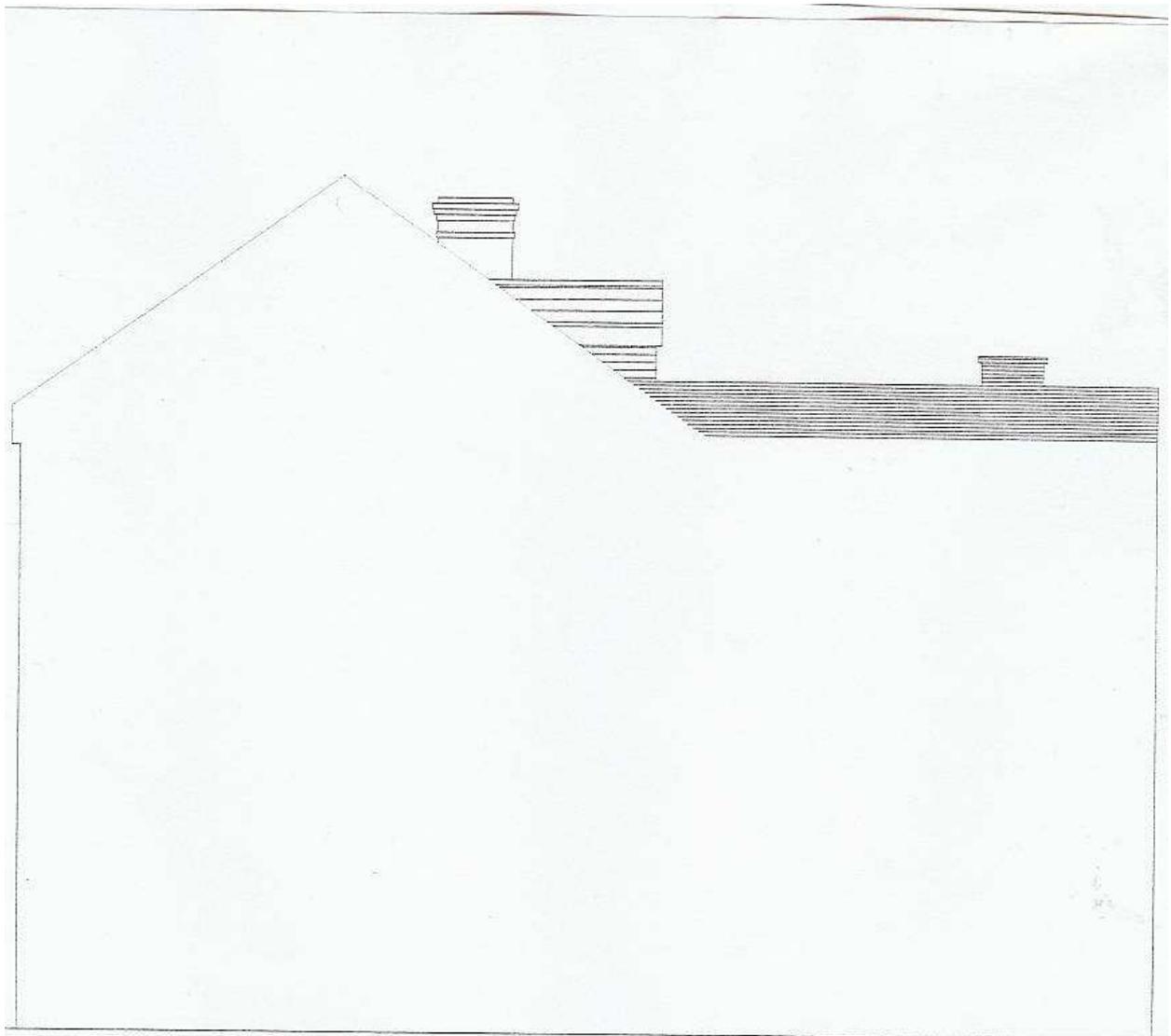
**Land at:- 77 Platts Lane,  
Hampstead, London NW3 7NL**

**Reference:  
APP/N5090/X/09/2108111**

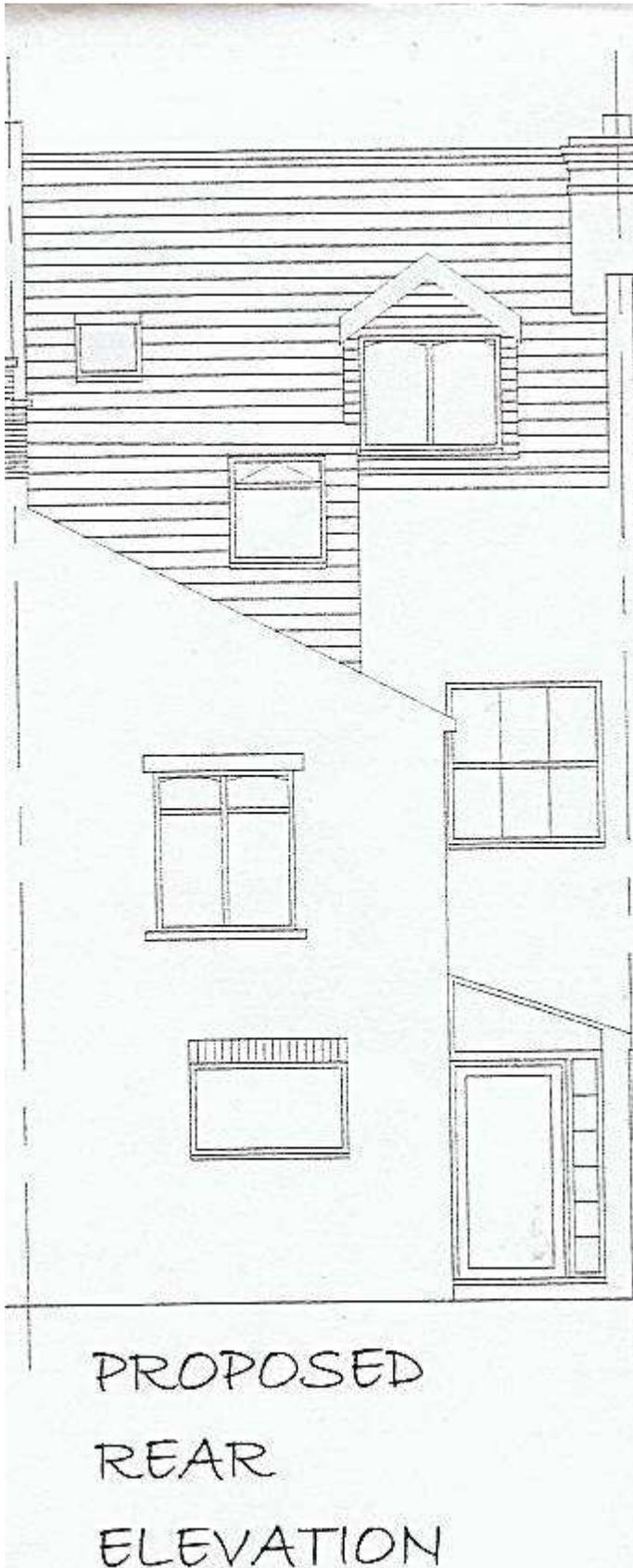
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Scale:- 1:100



PROPOSED SIDE ELEVATION (Through party wall)







# Lawful Development Certificate

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Temple Quay  
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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)  
ORDER 1995: ARTICLE 24

**IT IS HEREBY CERTIFIED** that on 27 April 2009 the operations described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown on the plans 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 reason:-

The proposal involves the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The roof alterations are not subject to any of the limitations set out in paragraph B.1 of the Schedule to the Town & Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008 and it complies with all of the conditions imposed by paragraph B.2. Moreover, it constitutes development within the curtilage of a dwellinghouse for the purposes of this legislation. Accordingly, the works set out in the First Schedule below constitute permitted development not requiring planning permission, by virtue of the provisions of Article 3(1) of, and Class B of Part 1 of Schedule 2 to, the Town & Country Planning (General Permitted Development) Order 1995, as amended by the Schedule to the Town & Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008.

Signed  
*Ian Currie*  
Inspector

Date:- 13 January 2010  
Reference:- APP/N5090/X/09/2108111

### **First Schedule**

Loft conversion with dormer window to rear addition roof, involving raising party wall parapet (extensions to roof including dormer window to rear projection to facilitate a loft conversion).

### **Second Schedule**

Land at 77 Platts Lane, Hampstead, London NW3 7NL.

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
  2. 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
  3. 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.
  4. 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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