
Appeal Decision

Site visit made on 25 August 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 8TH OCTOBER 2020

Appeal Ref: APP/A5270/X/19/3243331
38 Rectory Road, Southall, UB2 4EN

- 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 Jason McClymont against the decision of the Council of the London Borough of Ealing.
 - The application Ref 194577CPL, dated 25 October 2019, was refused by notice dated 16 December 2019.
 - 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 the construction for rear dormer and gable end.
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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 Matter

2. The description of the proposal from the application form is set out in the banner heading above. The proposal was described on the decision notice issued by the Council as "Alteration from hip to gable end; rear roof extension incorporating a Juliet balcony; and installation of three rooflights to front roof slope (Lawful Development Certificate for a Proposed Development)". Whilst this is not the description of the development used on the application form, and there does not seem to have been agreement between the parties to use a different description, it is an accurate description of the proposals shown on the submitted plans.

Reasons

3. The Council's reason for refusal was that the provisions of Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development)(England) Order 2015 ("the GPDO") did not apply and the proposal was therefore unlawful.
4. The Informative stated that the Schedule 2, Part 1 Classes B and C provisions did not apply as there was more than one residential unit on the site. Classes B and C permit the enlargement of a dwellinghouse and addition or alteration to its roof, or any other alteration to the roof. Dwellinghouse does not include a

building containing one or more flats, or a flat contained within such a building¹. A building is defined as including any structure or erection².

5. The detached outbuilding at the rear of the garden was granted a certificate of lawfulness of existing use as a self-contained flat on 6 September 2019. It is accepted by the parties that this is a separate residential use and that the outbuilding is not within or connected to the dwellinghouse which is the subject of this appeal. I was unable to see the outbuilding during the site visit. The separate residential use is described as a flat on the Council's Questionnaire and on the delegated decision, and there may be a flat within the outbuilding itself. However, the separate residential unit is not a flat within the building to which this appeal relates. The appeal property is a dwellinghouse to which Schedule 2, Part 1 Classes B and C applies. It is therefore necessary to consider whether the other limitations and conditions required by those classes have been met.
6. The application stated that the proposal complies with Class B permitted development rights. The Council, in its delegated decision, set out the requirements and limitations from Classes B and C and, based on the plans submitted with the application, was satisfied that the proposals met them. I have no reason to doubt the parties on this point and I am satisfied that the proposals would therefore be permitted development pursuant to Schedule 2, Classes B and C of the GPDO.
7. 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 the construction for rear dormer and gable end 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.

Zoë Frank's

INSPECTOR

¹ Definition of "dwellinghouse" in Article 1(2), GPDO.

² Definition of "building" in Article 1(2), GPDO.

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 25 October 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed operations would be permitted development pursuant to Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development)(England)Order 2015.

Zoë Frank
Inspector

Date
Reference: APP/A5270/X/19/3243331

First Schedule

Construction for rear dormer and gable end as shown on plans numbered AH735 01, 02 & 03.

Second Schedule

Land at 38 Rectory Road, Southall, UB2 4EN.

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.



Plan

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

by Zoë Franks, Solicitor

Land at: 38 Rectory Road, Southall, UB2 4EN

Reference: APP/A5270/X/19/3243331

Not to scale



SITE LOCATION PLAN

