



Appeal Decision

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2021

Appeal Ref: APP/C5690/X/20/3258836

47 Veda Road, Ladywell, London SE13 7JQ

- 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.
- The appeal is made by Veda Road Ltd against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/20/117029, dated 15 June 2020, was refused by notice dated 13 August 2020.
- 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 for the construction of a hip to gable roof extension and rear roof extension at 47 Veda Road SE13 together with the installation of three roof lights in the front roof slope.

Summary decision: The appeal is allowed and a certificate of lawful use or development (LDC) is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

1. It has not been necessary to do a site visit, as I am able to proceed to a decision based on the submitted evidence and facts from both parties.
2. The purpose of an LDC application is to determine whether specified uses or operations would have been lawful on the date the application was made. An LDC is not a planning application, so any planning merits do not fall to be considered.
3. It is apparent from the evidence before me, and by the appellant's own admission, that works to the roof have already started and that by the time the appeal would be determined the construction of the ridgeline is likely to have been completed. From the photographs in the Council's Statement, the works appear to have been completed.
4. In these circumstances the agreement of the parties is normally sought to determine the appeal as though the application had been made under s191 for existing development. However, there are differences between what has been built and what was shown on the plans. Two raised rooflights have been added to the roof of the dormer and there are only two rooflights on the front roof elevation, not three. In addition, by the appellant's own admission in his Final Comments, the "highest part of the existing roof has been replaced by a roof that is no more than 2 brick courses or a maximum of 150mm above it". Therefore, dealing with the matter under s191 would not be appropriate.
5. Notwithstanding if works have already been carried out, it follows that I must determine whether the proposed roof development, as described in the

heading above and shown on the submitted plans, would have been lawful on 15 June 2020 against any Order in force at the time the application was made.

6. It is clear from the application form that the appellant is not seeking an LDC for any works to the basement. Whilst the Council has refused the LDC in part for works to the basement, this matter does not fall under the remit of the LDC before me, and is a separate matter for the parties to pursue. Therefore the appeal proceeds on consideration of the Council's second reason for refusal relating to the proposed roof works.

Main Issue

7. Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO') contains two classes relating to permitted development ('PD') that can be undertaken to the roof of a dwellinghouse, namely: Class B (*the enlargement of a dwellinghouse consisting of an addition or alteration to its roof*) and Class C (*any other alteration to the roof of a dwellinghouse*) which includes roof lights. Both classes are subject to conditions and limitations, which are expressed precisely, such that something is either PD or it is not PD. Consequently, any infringement of the limitations or conditions, however small or minor, is an infringement that removes the development from PD.
8. The Council have alleged in their reason for refusal that the roof development contravenes limitation C.1.(c) of Class C. This limitation stipulates that if the development would result in the highest part of the alterations being higher than the highest part of the original roof, then it is not permitted development. I note that in the Council's Delegated report it also found the development would contravene limitation B.1(b) of Class B because it would exceed the highest part of the roof, and recommended refusal for contravention of Classes B and C. However this did not form part of the refusal reasons. In my view the Council has misdirected itself and assessed the proposed development on what has been built and allegations of roof raising, rather than on the submitted plans.
9. I wrote to the parties seeking their views on whether the proposed roof works fell within Class B. Both parties have responded and I will deal their comments later.
10. The main issue is whether the Council's decision to refuse the LDC application was well-founded. This turns on whether the proposed works to the roof, as described and shown on the submitted plans, would have constituted PD and be granted planning permission under Article 3 and Schedule 2, Part 1, Class B and Class C of the GPDO on the date the application was made.

Reasons

11. The property is a semi-detached dwelling with a hipped roof. The proposed development, as shown on plan 'Proposed Elevations and Section Rev 0' shows the hipped roof would be made into a gable. In addition, there would be an extension to the rear roof slope with the installation of a flat roof dormer window. Three rooflights would also be installed into the front roof slope.

12. Looking at the submitted plans, the ridge of the original hipped roof is shown on the 'Existing Elevations and Section Rev 0' plan and its height can be judged against the side of the chimney in the middle of the roof. The submitted 'Proposed Elevations and Section Rev 0' plan shows the ridgeline in the same place with no obvious raising of the roof, when compared to the chimney. Indeed the plans are annotated to say "Existing ridge line maintained". Furthermore, the side elevation shows the roof of the dormer set down from the apex of the roof and hence lower than the highest part of the existing roof.
13. The submitted plans therefore indicate to me that the highest part of the proposed enlargement and alterations of the roof would not be higher than the highest part of the original roof. Consequently I find there is no contravention of limitation C.1.(c) of Class C, as the Council contend. This would make their decision not well-founded. Furthermore, as there is no increase in the height of the roof there is no contravention of limitation B.1(b) of Class B.
14. The Council has responded to my enquiry to say that the cheek of the dormer forming part of the gable wall would make the works an extension to the dwellinghouse that would fall under Class A of the GPDO. It is clear from the Council's evidence that an assessment under Class A did not feature in its consideration of the LDC application or refusal reasons. Moreover, Class A development does not include works to the roof, hence one is directed to Classes B or C, and Class B permits the upward extension of a gable wall to create a hip-to-gable roof enlargement.
15. The appellant has responded that the Council did not raise concerns about the dormer cheeks and refers me to an email exchange. He contends that the proposed roof works would comply with Class B.
16. Class B allows hipped roofs to be made into gable roofs. To facilitate this, Class B enables the existing gable wall of the dwelling to be extended upwards to support the new shaped roof, provided no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse. The submitted plans show this would be the case and hence the proposed development would comply with condition B.2 (b)(ii) of Class B.
17. In making the hip-to-gable alteration the outside cheek of the dormer would be formed from the proposed upward-extended gable wall. The whole new gable end of the property would be rendered to match the existing gable wall to comply with condition B.2(a).
18. There is no commentary, condition or limitation to Class B that specifies that the cheeks of a dormer window cannot be formed from the gable end of a hip-to-gable roof enlargement or alteration, or that the cheeks must be set in from the gable wall, whether that wall is existing or created by the hip-to-gable works. The limitation requiring at least 0.2 metre distance between the edge of the dormer and the eaves does not apply to hip-to-gable enlargements. Furthermore, the parties agree that the cubic content of the proposed roof enlargements does not contravene the limitations.
19. The appellant draws my attention to a number of similar dormer cheek applications the Council has approved elsewhere. That may be so, but I have not been provided with any plans or details of these developments, or advised

whether they were considered as planning applications because the works were not permitted development. Consequently, I am unable to comment or draw any meaningful comparisons.

20. I find the proposed roof development, as described and shown on the submitted plans, would have been permitted development under Class B and Class C and hence lawful at the time the application was made.
21. If the works are carried out in a different manner from that put to me, or there are any change to the circumstances or any of the factors I have considered, then the roof alterations may no longer be lawful.

Conclusion

22. For the reasons above I conclude, on the evidence available, that the Council's refusal to grant an LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

23. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

K Stephens
INSPECTOR



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 15 June 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red 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 reason:

The alterations to the roof at 47 Veda Road, Ladywell, London SE13 7JQ as described and shown on the submitted plans 'Existing Elevations and Sections Rev 0' and 'Proposed Elevations and Section Rev 0' would be permitted development and benefit from planning permission under Article 3 and Part 1 of Schedule 2, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

K. Stephens

Inspector

Date: 14 May 2021

Reference: **APP/C5690/X/20/3258836**

First Schedule

Construction of a hip to gable roof extension and rear roof extension together with the installation of three roof lights in the front roof slope.

Second Schedule

Land at 47 Veda Road, Ladywell, London SE13 7JQ

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 use /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, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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 14 May 2021

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Land at: 47 Veda Road, Ladywell, London SE13 7JQ

Reference: APP/C5690/X/20/3258836

Scale: Not to scale



0m 1m 2m 3m 4m 5m 10m



PROJECT		
47 Veda Road		
London		
SE13 7JQ		
DRAWING		
Location Plan		
SCALE	DATE	REV
1:1250 @ A3	05/2020	0
buildmydesign		
www.buildmydesign.co.uk		
1 Perry Grove		
London		
SE18 3PG		
Tel: 020 3944 8820		
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