



Appeal Decision

Site visit made on 22 February 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 01st March 2022

Appeal Ref: APP/A5840/X/21/3272016
35 Underhill Road, London SE22 0QZ

- 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 Paul Clark against the decision of the Council of the London Borough of Southwark.
 - The application Ref 20/AP/3842, dated 29 December 2020, was refused by notice dated 17 March 2021.
 - 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 Side dormer loft extension.
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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 Matters

2. The proposed development is given a different description in the Appellant's application form and his appeal form. It is also described differently in the Council's decision notice. That in the application form is cumbersome and contains reasoning as to why the application should have been allowed, which is different from a description of the proposed development. I have used that in the appeal form, which adequately describes the works. This is only slightly different from that on the decision notice and the difference does not prejudice the Council.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue a certificate was well-founded.

Reasons

4. 35 Underhill Road ('No 35') is a semi-detached dwelling that has accommodation over three floors. It and its matching semi, 33 Underhill Road ('No 33'), each present gable ends to Underhill Road, with a ridged roof running back at 90 degrees to the gable.
5. The development would consist of a dormer extension to the roof that would include alterations to its gable end to create a pair of gables facing Underhill

Road. The Appellant seeks a certificate of lawful proposed development for these works on the basis that they represent 'permitted development' under the terms of Class B of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), (the 'GPDO'). Class B allows for 'The enlargement of a dwellinghouse consisting of an addition or alteration to its roof', subject to compliance with a number of provisions.

6. The Council's position is that the proposed roof alteration accords with all of Class B's provisions, save for (c). I have assessed what is proposed against the terms of Class B and I find that the parties' positions regarding compliance with the restrictions in Class B.1 (a), (b) and (d)-(h) is correct.
7. Class B.1 (c) states that the enlargement of a roof would not be permitted development where "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". There are therefore two tests in Class B (c): that a development should not extend beyond the plane of any roof slope which forms a principal elevation of the dwellinghouse; and that this elevation fronts a highway.
8. In this case, it is clear, and agreed by the parties, that the property's principal elevation is that which faces Underhill Road, which is a highway for the purposes of Class B.
9. The proposed works would result in an extension of the roof beyond the plane of the roof slope facing No 33. However, this is not its principal elevation and it does not front a highway. Although the gable end fronts a highway, I do not equate this with being a roof slope. It is a wall that supports the roof, the slopes of which run away from its ridge line towards No 35's neighbouring properties. Even if the gable end were to be considered a roof slope, which it is not, the proposed works would not extend beyond its existing plane.
10. The Council's argument that the elevation facing the road would be fundamentally altered through an alteration in the gable's height, carries no weight as there is nothing on this point in Class B to indicate that this would not be permitted development.
11. Neither party has presented appeal or court decisions in support of their positions. Therefore, I have made my assessment on the ordinary reading of Class B. As a matter of fact and degree, I find that the works proposed would accord with Class B, subject to the conditions in Class B B.2.

Conclusion

12. 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 side dormer loft extension 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.

R Curnow
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 29 December 2020 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development proposed in the application would be permitted by Class B of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). As such, no application for planning permission to undertake the work is required.

Signed

Roy Curnow
Inspector

Date 01st March 2022

Reference: APP/A5840/X/21/3272016

First Schedule

Side dormer loft extension

Second Schedule

Land at 35 Underhill Road, LONDON, SE22 0QZ

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:

by R Curnow MA(TCP), BSC(Hons) CMS MRTPI

Land at: 35 Underhill Road, LONDON, SE22 0QZ

Reference: A5840/X/21/3272016

Scale: Not to scale

