
Appeal Decision

Site visit made on 31 August 2016

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS DipTP MRTPI

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

Decision date: 27 September 2016

Appeal Ref: APP/C1625/X/16/3149289

Limekiln Farm, Middle Lypiatt, Stroud GL6 7LR

- 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 Mrs Caroline Uys against the decision of Stroud District Council.
 - The application Ref S.15/2031/CPE, dated 20 August 2015, was refused by notice dated 11 April 2016.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is as a residential dwelling without conditions imposed by permission S.4866/J.
-

Decision

1. The appeal is dismissed.

Reasons

2. The appellant has provided the original plans showing the bungalow as approved with its approved location on the block plan. A drawing at 1:1000 of this block plan was also provided. In the evidence the appellant has done an overlay of the original position and as-built position. At the site visit, three dimensions were taken to confirm the bungalow position in relation to the site boundaries. There is going to be some minor inaccuracy because of the nature of the block plan, but the measurements from the original end of the house to the boundary on site were about 15.16m and 16.76m. The corresponding measurement from the plan is about 10m and 11m. The dimension from the front corner of the front projection to the boundary measured about 17.24m and the corresponding measurement on the plan was about 17m. I therefore accept that there is a discrepancy in the siting of the bungalow in relation to the side boundary of about 5/6m. However, the measurement to the front boundary was almost the same on the plan and on site, so the plan provided showing the two situations overlaid does not appear to be correct as this shows the front corner position to be quite different.
3. I have taken into consideration the previous case law. In particular in *Handoll and Others v Warner Goodman and Streat and Others* 1995 the court of appeal held that if a development does not comply in a material respect, or to a material extent, with the planning permission which has been granted, the judge could not see how an occupancy condition attached to the permission for the development which was not carried out, can have application to the unauthorised development which was carried out. In comparing with the

Kerrier case it was noted and accepted by McCowan L.J. that the building constructed (in the Kerrier case) was on the approved site: it merely included an unapproved basement. He noted in this case (Handoll) The Paddocks was constructed outside the application site and not in the position which the local planning authority subsequently purported to approve. An outline application was required to "be accompanied by a plan sufficient to identify the land to which it relates". The identification of that land is of significance as "any grant of planning permission to develop the land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested therein." Similarly, a planning condition is a local land charge which is to be registered by reference to the land affected by it.

4. In that case the position change clearly had a material effect in that it took it outside the application site. It is quite clear that there has to be a material difference not just a difference, because if that were not the case then any difference in dimensions would mean the development was not in accordance with the permission. Materiality to my mind is not simply a matter of saying it has been found in other appeals that such and such distance is material. The materiality could be affected by many things. It seems to me that, say, a wind turbine is 20m out position in a 10 hectare field it would be unlikely to be considered as being materially different from its approved permission, but a terrace house in a tight residential area that is only say a meter or two out of place could be materially different.
5. In this case, the residence is on a large site and well spaced in relation to other buildings. The majority of the bungalow is on the footprint of the bungalow as approved. The building has moved about 5/6m to one side, but generally it has been built as approved. I noted a minor difference in window positions on one elevation and that the chimney on the end elevation has been built on the outside of the wall and not the inside. I consider that any reasonable person looking at the plans and building that was constructed would conclude that the building is that approved. The building, unlike in the Handoll case, is clearly constructed on the land forming the application site. Overall, I consider the 5/6m change in position is de minimis and the change to the building's position is not material or sufficient to conclude that the building was not that originally approved.
6. I have taken into consideration the case law and appeals that have been identified and consider on the facts of this case that there is no material difference between what was approved and what was constructed.
7. For the reasons given above I conclude that the council's refusal to grant a certificate of lawful use or development in respect of use of a residential dwelling without conditions imposed by permission S.4866\J was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Graham Dudley

Inspector