
Appeal Decision

Site visit made on 13 September 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 24 October 2016

Appeal Ref: APP/U5930/X/16/3151442

81a St Georges Road, Leyton, London E10 5RQ

- 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 S Mayet against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 160940, dated 30 March 2016, was refused by notice dated 24 May 2016.
 - The application was made under section 191(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 a double garage in rear garden.
-

Summary Decision: The appeal is dismissed.

Reasons

1. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. Having regard to the above, I consider that the main issue is whether, on the balance of probability, the erection of the double garage in the rear garden was substantially complete on or before four years prior to the date that the application was made. The burden of proof in this respect lies with the appellant.
 2. The background to the application now subject to this appeal is that planning permission was granted by the Council for a domestic garage in December 1995 under reference 95/0777. I have not been provided with plans of that garage but the appellant describes it as being rectangular in footprint. That permission was implemented but, it would appear, not in accordance with the approved plans, insofar as a site visit by a Council officer in February 1996 revealed that the rear of the garage had been partitioned into habitable rooms, a bathroom and a kitchenette. I understand that no further action was taken by the Council in respect of that structure.
 3. Nevertheless, it is clear from the photographic record provided by the Council that by 2008 the garage was no longer in situ in its original rectangular form. This is consistent with the statement from Mr Younus, the owner of No 81b St
-

George Road since 1996, who recounts that the garage had been partly reconstructed by the then owner of the appeal site but that construction had stopped.

4. In 2010, the appellant sought pre-application advice from the Council in relation to the erection of a garage. The Council visited the site as part of that process, as part of which the foundations of a garage were observed by the Council officer. This is again consistent with the statement from Mr Younus. The appellant sought further pre-application advice from the Council in October 2013. On that occasion, the Council officer did not make an accompanied site visit but noted that there was no evidence of a garage being erected from outside of the site. As the appellant fairly concedes, this is because the garage as now constructed was not standing there at that time. This is also confirmed by the Council's photographic record, which shows no garage on the site in 2012 or 2014.
5. The garage as it currently stands projects above the height of the boundary fence and the garage door opens directly onto the highway. The garage as existing is therefore clearly visible from the public highway. I am in no doubt that, had the garage been substantially complete at the time, it would have been readily apparent to the Council officer who visited the site in October 2013 and would have shown up clearly on the photographic record provided by the Council. Consequently, having regard to the above sequence of events and on the balance of probability, it seems likely to me that the foundations for the garage were in place from at least 2010 but that the garage was only completed some time between 2014 and 2016.
6. It follows that, on the balance of probability, the garage now on site was substantially completed at some point after 2014 and has only existed on site in its current form for a period of, at most, some two years. This is less than a period of four years, and as such the garage was not lawful on the date on which the LDC application was made.
7. The appellant's case, however, is that the garage as now existing is lawful by reason of being constructed on the same footprint as the previous garage granted planning permission in 1995. Two points arise from this. Firstly, on the appellant's own description, the garage granted planning permission in 1995 was rectangular in footprint. The garage as existing on site has a T-shaped footprint. On that basis, I do not consider that the garage now existing on the site can be considered to constitute the rebuilding of the garage granted planning permission in 1995. In my opinion, by reason of the difference in footprint, the erection of the garage now on site constitutes a new development.
8. Moreover, even if there was no difference in footprint or if that difference was only slight, it is evident from the appellant's own evidence that the garage granted planning permission in 1995 was demolished down to at least foundation level. In that scenario, as a matter of fact and degree, in my opinion the construction of the garage from that point to the completed structure on the site on the date of the LDC application would have constituted the rebuilding of the garage granted planning permission in 1995. The definition of "building operations" at Section 55(1A) of the 1990 Act specifically includes rebuilding. It follows that the rebuilding of the garage constituted a

building operation and therefore constituted development under Section 55(2) of the 1990 Act, for which planning permission was required.

9. In either of the two scenarios set out above, whether the garage was a completely new building or the rebuilding of that granted in 1995, the construction of the garage as now existing represents a new chapter in the planning history of the site. The start date for that new chapter is the date on which the garage now on site was made substantially complete. As indicated above, this is less than four years prior to the date on which the LDC application was made, and as such the garage could not have become lawful in that time whichever of the two scenarios is adopted.
10. The appellant has referred to the principle established by the case *Panton & Farmer v Secretary of the State for the Environment & Vale of White Horse*¹ that a use that is merely dormant or inactive could still be an existing use so long as it had already become lawful. The appellant contends that the use of the rear part of the garage as habitable accommodation commenced in 1996 and continued until at least 2001 and probably until 2005, a period that exceeds four years. The appellant therefore contends that the use of the rear part of the garage for habitable accommodation had become lawful but, following the demolition of the garage, has remained inactive. The appellant therefore considers that the principle established in *Panton & Farmer* applies.
11. However, I have been provided with no documentary evidence to demonstrate that the use of the rear part of the garage for habitable accommodation had become lawful. The appellant has therefore not discharged the burden of proof that falls upon him in that respect.
12. Moreover, the use of part of the garage for habitable accommodation could not survive the demolition of the garage granted planning permission in 1996, given that everything needed to sustain that use, in other words the building and installations, were removed when the garage was demolished. It follows that the use for habitable accommodation was not dormant or inactive in the period between the demolition of the garage granted planning permission in 1996 and the construction of the garage now existing: that use was incapable of taking place and had therefore ceased. The principle established in *Panton & Farmer* therefore does not apply in these circumstances.
13. The appellant has expressed concerns regarding the pre-application advice received from the Council and the procedures adopted by the Council in determining the LDC application. However, neither these matters nor the planning merits of the development are before me. I have therefore determined this appeal having regard solely to the facts of the case and relevant judicial authority.
14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a double garage in the rear garden at 81a St Georges Road, Leyton, London E10 5RQ was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

¹ *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461

Formal Decision

15. The appeal is dismissed.

Paul Freer

INSPECTOR