The Planning Inspectorate

Appeal Decision

Site visit made on 24 November 2016

by George Mapson DipTP DipLD MRTPI

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

Decision date: 21 December 2016

Appeal Ref: APP/T5150/X/16/3150376
1 Crouch Road, London, NW10 8HS

- 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 Joel Frankel (Pridebell Limited) against the decision of the Council of the London Borough of Brent.
- The application Ref 16/0112, dated 11 January 2016, was refused by a notice dated 23 March 2016.
- 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 described on the application form as "*Construction of a single storey ground floor extension and hip to gable loft conversion".* On the Council's decision notice it is described as a "*Certificate of lawfulness for the demolition of an existing conservatory, proposed erection of a single storey rear extension, hip to gable end extension, rear dormer window and installation of three front rooflights to dwellinghouse".*

Decision

1. The appeal is dismissed.

Main issue

2. An LDC appeal is confined to reviewing the Council's decision, to establish whether the refusal to grant a certificate was well-founded; that is, the decision itself, not necessarily the reasons for it. Schedule B of the decision notice states:

> *REASONING*
>
> *1 Based on the submitted plans, the proposal does not comply with the provisions of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015.*
>
> *OTHER INFORMATION*
>
> *1 The applicant is advised that the 'existing' plans submitted do not accurately reflect the existing or proposed dwellinghouse. This determination has been made to the extent possible based on the information submitted.*
>
> *2 The applicant is advised that permitted development rights under Schedule 2, Part 1, only apply to properties lawfully in use as a single dwellinghouse. It appears that the building is being altered to use as separate flats or a large house in multiple occupation.*
>
> *3 The rear extension extends beyond a wall forming a side elevation and has a width greater than half the width of the original dwellinghouse, contrary to Schedule 2, Part 1, Class A, A.1 (j).*

Clarification

The date of the application

3. All lawful development attracts permitted development rights under the GPDO[1]. The situation must be judged at the date the development was carried out. With operational development this is normally the date when the works commenced.

4. The application was made on 11 January 2016 and was made under section 192(1)(b); the section that deals with proposed operational development. This is confirmed on the appeal form.

5. In an email dated 29 November 2016, the appellant's agent (GC Planning Partnership) confirmed that the building works commenced in December 2015. As the development existed at the time the application was made, it should have been made under section 191(1)(b)[2].

Reasons

The 'existing' and 'proposed' plans and the use of the appeal property

6. There are two strands to the Council's decision. The first concerns the accuracy of the information supplied with the application, in particular the existing and proposed plans. This is important because permitted development rights relate only to lawful uses, and Part 1 rights apply only to a dwellinghouse[3].

7. The Council's delegated report of 21 March 2016 states that Council officers visited the appeal property on 15 March 2016. At that time the single-storey rear extension, the hip-to-gable end extension and the rear dormer window had already been constructed and rooflights had been installed. The appeal building was vacant and significant building works were being undertaken.

8. The report says that the internal layout of the appeal building was not as shown on either the existing or proposed plans. The rooms marked as bedrooms 1 and 3 were not as specified on the plans. The 'lounge' room, identified on the plans as 'proposed ground floor', had a separate room constructed within it. This appeared to the Council's officer to be an en-suite bathroom under construction. He saw that 6 new shower trays had been placed within this room.

9. The Council concluded that it was not possible to ascertain the use of the appeal property at that time and whether or not it was lawful. It appeared to the Council that the property would no longer be used as a single family dwellinghouse. The internal layout suggested that it was being converted into studio flats or a HMO, with en-suite facilities to each room.

10. Following the Council's decision on the January 2016 LDC application, further changes were made to the internal configuration of the building. The partitions to create what

[1] GPDO – The Town and Country Planning (General Permitted Development) (England) Order 2015. Schedule 2 of the Order sets out permitted development rights that apply to various forms of development. Part 1 deals with development within the curtilage of a dwellinghouse. Within Part 1, Class A applies to the enlargement, improvement or other alteration of a dwellinghouse and Class B applies to additions etc to the roof of a dwellinghouse.

[2] Section 191(1)(b) enables any person to apply to the local planning authority for a certificate to the effect that: "*Any operations which have been carried out in, or over or under land are lawful*". Development is lawful for planning purposes if it falls within 1 of 9 categories; the relevant one in this case being that it benefits from a general planning permission granted by the GPDO.

[3] Article 2 of the GPDO deals with the interpretation of the terms used in the Order. It states that a "*dwellinghouse", except in Part 3 of Schedule 2 to this Order (changes of use), does not include a building containing one or more flats, or a flat contained within such a building*". Whilst it is likely that small HMOs (use class C4) fit within the GPDO meaning of a "dwellinghouse", larger HMOs (a 'sui generis' use) are unlikely to because of their size, use and commercial aspect. However, whether or not a particular large HMO should be regarded as a "dwellinghouse" would be a matter of fact and degree, on the facts and circumstances of the case.

had appeared to be an en-suite room were removed, as were the shower trays. That is the situation that I saw on 24 November 2016. The Council says that the present situation differs materially from that which was seen on 15 March 2016.

11. The appellant says that he has no knowledge of the 6 shower trays. He says that the partitioned area within the lounge was not a separate room, but a cupboard that was created to store tools and materials safely. This was required because the site was vacant and had no windows.

12. On 10 May 2016 the appellant signed a statutory declaration in which he states that the property is and will remain a dwellinghouse and that he has no intention to convert it into flats or a HMO. That declaration accompanied another application that he made for a certificate of lawfulness (Ref. 16/1990) for a single-storey rear extension at the appeal property. Its shape and size differ significantly from the appeal development and on 12 July 2016 the Council certified that it would fall within the ambit of Schedule 2, Part 1 Class A permitted development[4].

13. However, no such declaration was made at the application stage for the appeal development. The responsibility is on the applicant to provide clear, relevant and unambiguous evidence to support an application for a certificate of lawfulness at the time that it is made. The application must provide sufficient information for the Council to decide it or it may be refused.

14. The plans that accompanied the application did not accurately depict the situation that existed at the site when Council officers visited it in March 2016. This raised doubts in their minds about the lawfulness of the use of the appeal property. Whether or not those doubts were justified, the fact remains that the information supplied at that time was inaccurate and gave rise to uncertainty. This factor alone would warrant the Council's decision to refuse to grant a certificate.

One piece of development, one component of which was not compliant with the GPDO

15. The second strand of the Council's decision relates to non-compliance with the relevant provisions of the GPDO. Where there are two or more clearly severable elements, such as a ground floor extension and a loft conversion, rights may be claimed for one or the other, if on its own it meets the provisions of the Order and, as a matter of fact and degree, the two elements were not carried out as one piece of development.

16. In this case, the application form and the appeal form both refer to the works as "*construction of a single storey ground floor extension and hip-to-gable loft conversion*". The evidence provided indicates that the two elements were carried out as one piece of development.

17. Any claim of permitted development rights must be measured against each and every one of the sub-clauses of the relevant part of Schedule 2. If any of the limitations, conditions, exemptions or provisos are exceeded, then the whole development is unlawful, not just that element in excess of permitted development rights[5].

18. Even if the Council had accepted that, at the time the application was made, the appeal property was a dwellinghouse to which Part 1, Class A and B permitted development rights applied, it would not have granted a certificate of lawfulness for this development. This is because the single-storey rear extension extends beyond a wall forming a side elevation and has a width greater than half the width of the original dwellinghouse. It therefore fails to meet the limitations of Schedule 2, Part 1, Class A, A.1(j). This point is acknowledged (i.e., not contested) by the appellant's agent in the email of 29 November 2016 (see paragraph 5 above).

[4] On 14 July 2016 the Council granted planning permission (Ref. 16/1991) for another proposed single-storey rear extension at the appeal building. The proposals differ from one another and are mutually exclusive. The implementation of one or other of those proposals awaits the outcome of this appeal.
[5] *Garland v MHLG* [1968] 20 P&CR 93.

19. On the basis that the whole development falls outside the scope of permitted development rights conferred by the GPDO and is therefore unlawful, I find that the Council's decision to refuse to grant a certificate was well-founded.

Conclusions

20. I have determined the appeal on the basis of the development that had been carried out on the date the application was made, and the situation that prevailed at the appeal property at that time.

21. In coming to my decision I have taken account of my observations at the site and all the matters raised in the written representations before and after the site visit. For the reasons given, I find that the Council's decision to refuse to grant a certificate was well-founded and accordingly, the appeal is dismissed.

George Mapson

INSPECTOR