
Appeal Decision

Site visit made on 13 March 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 22 March 2017

Appeal Ref: APP/M5450/X/16/3158884
88 Kenilworth Avenue, Harrow HA2 8SA

- 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 P Mathankumar against the decision of the Council of the London Borough of Harrow.
- The application Ref P/0716/16, dated 16 February 2016, was refused by notice dated 28 June 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 conversion of hip to cable (gable) and erection of dormer to rear roof and loft conversion.

Summary of Decision: The appeal is dismissed.

Procedural and background matters

1. Following my site visit I requested clarification from the parties about work that had been implemented on site and the dates that this took place. The representations received have been taken into account in this decision.
2. Planning permission was granted, subject to conditions, for the erection of a single storey front extension, single and two storey side extension and single storey rear extension in March 2015¹ (the 2015 appeal).
3. A subsequent permission was granted on 25 January 2016 for a single storey front extension, two storey side to rear extension and single storey rear extension (the 2016 pp)². The Council says that it is not sure which of these permissions is being implemented because the only difference is the proposed external finishes. The appellant says in turn that the work on site is to implement the 2016 permission.
4. The date on the application form subject of the appeal before me is 16 February 2016; however the Council advised the applicant on 17 March 2016 that his application was invalid. It appears that a revised drawing was received on 26 April 2016 and an amended application form was submitted on 3 May 2016. The LDC application was validated on 5 May 2016.
5. An application for an LDC is assessed on the basis of fact and law and planning merits form no part of the decision making process.

¹ Appeal reference APP/M5450/D/14/3003415

² Council reference P/5572/15

Reasons

6. S192(2) of the Act³ says that if the decision maker is provided with information which indicates that the operations described in the application would be lawful if begun at the time of the application a certificate should be issued to that effect. At the date on the application form the LDC application was invalid because the appellant initially said that it did not involve any development. Moreover the submitted plan also showed more than the proposed development. There was a delay before the application form and the plan was corrected and as I have noted above, the evidence is that the relevant documents to complete the application were not submitted to the Council until late April and early May.
7. The Town and Country Planning (Development Management Procedure) (England) Order 2015, (DMPO) says at paragraph 39 that a valid application is taken to have been received when all the documents, particulars and evidence have been received and in this case this does not appear to have occurred until 3 May 2016.
8. Both parties say that building work commenced on site in late summer 2014, well before the relevant approvals. Therefore this work is unlikely to be the works to implement either the 2016 pp or the 2015 appeal scheme. The appellant's declaration on the application form says that the proposed work had not commenced as at 16 February 2016. He also says that work to implement the permission granted by the 2015 appeal⁴ commenced whilst the Lawful Development Certificate (LDC) application, now before me, was being assessed.
9. Notwithstanding this, Building Control records provided by the Council show that a damp proof membrane had been inserted in masonry walls by 19 February 2017. However the appellant says that he is unable to recall the date of this visit. I thus favour the Council's evidence because the appellant's evidence is vague and unspecific and there is no reason to doubt the dates given by Building Control.
10. The Council says that either the 2016 pp or the 2015 appeal permission had been constructed to eaves level at the time of the site visit for the LDC application. This visit took place on 28 June 2016. As I saw, it appears little work has subsequently taken place.
11. Given the records of Building Control inspections and the extent of work completed by the end of June it is highly likely that this work had commenced by the date of the application or at the latest by 19 February 2016⁵. Accordingly on the balance of probabilities, and in the absence of a confirmed start date, the 2016 pp or in the alternative the 2015 appeal approval had been implemented at the date the application was completed. Thus this is a factor that must be taken into consideration.
12. Condition 3 of the 2015 appeal decision says that the development must be carried out in accordance with approved plan drawing P-02. A similar condition

³ Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991

⁴ The appellant says in his grounds of appeal that this was application P/1432/15/4750 but the application bearing this reference was refused and dismissed on appeal. His later comments received after the site visit say that the 2016pp is being implemented.

⁵ Before the submitted application for the LDC was complete.

is attached to the 2016 pp. Whichever of these permissions has been implemented the relevant condition bites. Article 3 (4) of the GPDOs⁶ says that "Nothing in this Order permits development contrary to any conditions imposed by any planning permission..." The works proposed in the LDC application would prevent the implementation of either the 2015 appeal scheme or the 2016 pp in accordance with the conditions attached. This is because the proposed roof form, amongst other matters, would be materially different from the approved developments. Consequently the proposed works in the appeal before me are not development that benefits from the deemed permission granted by the GPDO. Alternatively if the appellant is implementing any other scheme then no planning permission has been granted and my conclusion remains the same.

Decision

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed conversion of hip to cable (gable) and erection of dormer to rear roof and loft conversion was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me by Section 195(3) of the 1990 Act as amended and uphold that decision.
14. Consequently the appeal is dismissed.

Sukie Tamplin

INSPECTOR

⁶ The Town and Country Planning (General Permitted Development)(England) Order 2015