
Appeal Decision

Site visit made on 28 February 2017

by Paul Dignan MSc PhD

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

Decision date: 29 March 2017

Appeal Ref: APP/J1535/X/16/3155307
12 Marjorams Avenue, Loughton, IG10 1PT.

- 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 Stephen Porcas against the decision of Epping Forest District Council.
 - The application Ref EPF/2224/15 CLD, dated 4 September 2015, was refused by notice dated 1 February 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 Completion of previously approved but not fully completed ground and first floor extensions. Initial consent given under EPF/0674/74 and garage plus structural works completed and meaningful start achieved within period stipulated under planning consent certificate.
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Decision

1. The appeal is dismissed.

Reasons

2. The appeal property is a 2 storey semi-detached house. Planning permission¹ was granted in 1974 for a 2 story extension with a garage to the side. Part of the upper floor extension was above the garage. It seems that a ground floor rear extension and a garage were built, but not the upper floor element. The appellant considers that the construction of the foundation, base slab and superstructure in 1975 was commencement of the 1974 permission, which he now seeks to complete.
3. The Council's view is that what has been built is a completed development that is materially different to the development permitted by the 1974 permission. There are evident differences between the approved floor plans and the ground floor extensions as built, but the Council did not consider them to be material. It considered however that the works carried out could not be interpreted, as the appellant claimed, as a pause in the implementation to completion of the part 2-storey development, because, as I understand it, no structural provision was made for the second storey. It is also relevant that submissions for Building Control approvals were made for a garage and single storey extension in 1975, indicating that the building operation was complete.

¹ Council Ref. EPF/0674/74

4. It is of course possible for works for the implementation of a planning permission to cease for periods, and these can be lengthy. However, in this case it seems clear that the garage and rear extension as built made no structural provision for the upper floor and was itself completed in a way that was of an overall form that was not in accordance with the 1974 permission. The garage had a completed roof and no means of supporting a further storey above. A steel beam below the garage roof structure was not in the location of the rear wall of the upper floor shown on the approved plans and hence could not be linked to the 1974 permission. It appears also that there was no provision within the extension roof structure for supporting an upper floor. There is also a parapet wall around the rear extension roof line, with the garage roof being some 0.3m lower than the extension roof, whereas the 2nd floor extension would have extended across the two ground floor elements at one level.
5. It seems clear to me that what was built in 1975 was a functionally different construction to the development approved in 1974, and that it was itself completed. The works carried out were not the partial construction of walls for a part 2-storey development. As a matter of fact and degree I consider that the extension and garage were built as one operation and not with a view to erecting another floor above. Considerable alterations, including some demolition, would need to be carried out for the existing walls to be used as part of the 1974 approved development. As such, looking at the works as a whole, I consider that the works that were carried out for the single storey extension and garage were not works comprised in the 1974 planning permission, and hence, despite being material operations in terms of section 56(4) of the 1990 Act, were not effective in meeting the requirements of section 56(2) of the Act, which deals with the question of when development is begun for the purposes of the Act.
6. It follows that the 1974 planning permission did not commence within the requisite 5-year period, and is no longer extant and capable of implementation. The Council's decision to refuse to issue an LDC was therefore well founded, and the appeal cannot succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Paul Dignan

INSPECTOR