

Appeal Decision

Site visit made on 10 March 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 13 April 2017

Appeal Ref: APP/A5840/X/16/3158006
7 Beaulieu Close, London SE5 8BA

- 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 (hereinafter "certificate").
 - The appeal is made by Mr Harry Badham against the decision of the Council of the London Borough of Southwark.
 - The application ref. 15/AP/5200, dated 29 December 2015, was refused by notice dated 21 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 is sought is described at section 8 of the application form as "Creation of a set-back dormer roof to rear of property in order to create additional living space."
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Decision

1. The appeal is dismissed.

Preliminary matters

2. A certificate is not a planning permission. Whilst the third party from 12 Beaulieu Close attended the site visit and I took the opportunity to view the rear of the appeal property from the front half of the side alleyway next to No. 12, I should emphasize that the planning merits of the proposed development are not relevant to this appeal and that there is no planning application before me.
3. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant and the relevant test of the evidence is on the balance of probabilities.
4. My decision is based on whether or not the proposed operation would be lawful if begun at the time of the application, which was 29 December 2015.

Main issue

5. The main issue is whether the Council's decision to refuse to grant a certificate was well founded.
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Reasons

6. The main issue turns on whether the proposed development would have amounted to permitted development at the time of the application.
7. The sole reason the Council gave for the refusal of the application for the certificate was as follows: "The proposed development would not be lawful as the property does not benefit from permitted development rights because it does not satisfy the definition of a single family dwelling house given the additional unit of No 7A from which it is separated horizontally."
8. Article 3(1) and Schedule 2, Part 1, Class B of The Town and Country Planning (General Permitted Development) (England) Order 2015 (hereinafter "GPDO") grants planning permission for a rear roof dormer of the type proposed in the application, provided it can be classed as development within the curtilage of a dwellinghouse.
9. Article 2(1) of the GPDO says the term "dwellinghouse" "...does not include a building containing one or more flats, or a flat contained within such a building". The term "flat" is defined there as "...a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally".
10. No. 7 Beaulieu Close was originally constructed in about 1970 as a three-storey, end-of-terrace dwellinghouse. A single-storey extension was added to the northern side of the house in about 1990. The appellant purchased the house in 2007. The ground floor extension was built as an integral part of the house. There is no evidence to suggest it was built on a separate plot from the original house. The H.M. Land Registry plan confirms that there was land on the northern side attached to the house before this extension was added.
11. Planning permission was granted in January 2008 (ref. 07-AP-2705) for first floor and roof level extensions above the single-storey side wing to create a one-bedroom house to the side of No.7. Permitted development rights were removed for the approved house which was to be known as No. 7A. I have not been supplied with any copies of the approved plans but it appears that construction was completed in 2012 and that it later became apparent that the development was not as approved.
12. It is a possibility that the planning permission issued under ref. 07-AP-2705 was never lawfully implemented. Indeed, a certificate of lawfulness for the existing internal layout at No. 7A, having been in place for at least four years, was issued in September 2016 under ref. 16/AP/2718. This existing layout, which would have been in place on 29 December 2015, shows the ground floor of the single-storey side wing retained with No. 7 save for a new entrance door and an enclosed hallway and staircase that form part of the one-bedroom, self-contained maisonette which is No. 7A. It is spread across the first floor and roof level extensions directly above that side wing. The appellant confirms that No. 7A was used as a holiday let from approximately 2013-2016.
13. Whatever the scheme shown under ref. 07-AP-2705, No. 7A as built cannot be readily identified as a dwellinghouse on a separate plot that is physically and functionally separate from the original house and the whole of the land

occupied with that house. There has been no physical subdivision of the land attached to the original house at the front or the rear. Internally, there is the extended house at No. 7 spread over three floors save for the insertion of the entrance door, hallway and staircase through part of the 1990 ground floor side wing that gives access to the self-contained holiday flat (at No. 7A as at 29 December 2015) above that 1990 side wing. The ground floor of No. 7 wraps around the hallway and staircase of No. 7A. Nevertheless, No. 7A amounts to a self-contained residential unit that forms part of a building from some other part of which it is divided horizontally.

14. A sizeable part of the ground floor of No. 7 is below No. 7A, whilst another smaller part of that ground floor was incorporated into the flat at No. 7A. I consider that No. 7 is part of a building on the appeal site containing one or more flats, given the works that have led to the creation and layout of No. 7A as a self-contained flat. No. 7 does not fall in line with the definition of a dwellinghouse found at Article 2(1) of the GPDO. Class B rights for the erection of the dormer within its curtilage were not therefore available at the time of the application. The proposed development would require an express grant of planning permission by the local planning authority.
15. Turning to other matters raised, the separate accesses and legal titles do not alter the characteristics of the building on the appeal site. Neither the ownership of the whole site by the appellant nor the use of No. 7A as a self-contained flat for holiday letting at the time of the application is a determining factor in this appeal. The appellant points me to four new developments on Beaulieu Close since its original construction in the 1970s. It is said that these are on infill plots to create extensions and new separate dwellings. No exact addresses have been provided so it is difficult to take this point too much further. I did take note however of nos 1a and 11a Beaulieu Close; from what I saw on my site inspection and from comparing the H.M. Land Registry plan with a more up-to-date location plan, these two later developments appear to be conventional town houses on their own plots. They do not appear to have been interwoven with the buildings and gardens at nos 1 and 11 Beaulieu Close respectively.

Conclusion

16. I have taken account of all other matters raised in reaching my conclusion that the proposed operation would not be lawful if begun at the time of the application. The Council's refusal to grant a certificate was well founded. The appeal has therefore been dismissed in accordance with the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andrew Dale

INSPECTOR