



Appeal Decision

Hearing held and site visit made on 14 June 2017

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 16 June 2017

Appeal Ref: APP/T2405/X/16/3162515

1 Hat Road, Leicester, LE3 2WF

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act") against a refusal to grant a Certificate of Lawful Use or Development ("LDC").
 - The appeal is made by Tony Smith ("the Appellant") against the decision of Blaby District Council ("the Council").
 - The application Ref 16/1250/CLP, dated 2 September 2016, was refused by notice dated 26 October 2016.
 - The application was made under Section 192(1)(b) of the 1990 Act.
 - The development for which a LDC is sought is the erection of a one and half storey domestic outbuilding ancillary to the main dwelling-house at 1 Hat Road, Leicester, LE3 2WF.
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Relevant Background Matters

1. On 30 October 2001 conditional planning permission was granted for the erection of a detached garage to the rear of No. 1. The hardstanding to accommodate the new garage was laid but the new garage building was not erected.
2. In December 2007 the Council confirmed, by the grant of a Certificate of Lawful Use or Proposed Development¹ that a proposal for the erection of a building for uses specified in the Certificate at No. 1 would be permitted development.
3. On 18 March 2009 the Council granted conditional planning permission for the erection of a one and a half storey domestic outbuilding ancillary to the main dwelling-house at No. 1 ("the Approved Outbuilding").
4. In June 2010 a sectional garage was erected partly on the site of an existing garage at No. 1 and the hardstanding referred to above ("the Existing Garage"). The Existing Garage:
 - a) Remains on site.
 - b) Is used as a garage/workshop and an area for storage.
5. The level of part of the hardstanding on which the Existing Garage stands was raised by about 2-inches so as to create a level floor area within that part of the Existing Garage which is used for storage uses.
6. The planning permission for the Approved Outbuilding was subject to a condition that stated, "The development hereby permitted shall be begun

¹ Reference 07/0992/1/UYCS

before the expiration of three years from the date of this permission.” Accordingly, the permission for the Approved Outbuilding required commencement by the 18 March 2012.

7. In August 2014 the Appellant completed a “Pre-Application Form”. The description of the proposed development on which the Appellant sought advice states, “With reference to Application 09/0043/1/PX² which has now lapsed, it is proposed to resurrect a similar sort of 1½ storey ancillary building, possibly with a half storey basement to allow more head-height.” This proposal included the retention of the Existing Garage.
8. In October 2015 the Appellant commissioned a site survey for No. 1 and its curtilage (“the Site Survey Plan”). The Site Survey Plan shows the footprint of the Existing Garage and the Approved Outbuilding.
9. In June 2016 the Appellant made an application for a Non-Material Alteration to the Approved Outbuilding (“the Non-Material Application”). The Non-Material Application was acknowledged and validated. On 26 August 2016 the Council e-mailed the Appellant and stated that they were, “unable to process” the Non-Material Application and that the fee would be returned.

The Basis of the Appellant’s Case

10. The Appellant’s argument in this case is that he commenced the permission for the Approved Outbuilding when he erected the Existing Garage including raising the height of the hardstanding to accommodate it. Those works were carried out in June 2010 i.e. before 18 March 2012 when the permission for the Approved Outbuilding would have expired.

Main Issue

11. The main issue in this case is whether the erection of the Existing Garage and the works to facilitate that development was a commencement of the planning permission for the Approved Outbuilding.

Reasons

12. Section 56(2) of the 1990 Act explains development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.
13. Section 56(4) of the 1990 Act explains that a material operation means, amongst other things,
 - a) Any work of construction in the course of the erection of a building.
 - b) Any work of demolition of a building.
14. I do not consider that the works undertaken in the course of demolition of the previous garage at No. 1 and the preparing and building of the Existing Garage comprise a material operation in the carrying out of development for the Approved Outbuilding.
15. I have come to this conclusion because:

² The permission for the Approved Outbuilding.

- a) The Existing Garage has a footprint, the majority of which does not align with the footprint of the Approved Outbuilding.
 - b) The position of the garage door within the Approved Outbuilding is in a materially different position than the garage door within the Existing Garage.
 - c) The Existing Garage is single-storey in height whereas the Approved Outbuilding comprised two-storeys.
 - d) The Existing Garage has a flat roof whereas the roof of the Approved Outbuilding had a materially different in shape.
 - e) I do not accept that the Existing Garage was built with the intention that it could be altered at some future date to reflect the Approved Outbuilding.
 - f) The permission for the Approved Outbuilding contained the following condition, "No above ground construction shall take place until details of the materials to be used on the external elevation and roofs have been submitted to and agreed in writing by the District Planning Authority" ("the Materials Condition"). The Existing Garage clearly involves "above ground construction". It was agreed at the Hearing that the Materials Condition had not been discharged. The Appellant explained that he had not sought to discharge the Materials Condition because he was implementing a planning permission granted by the then Town and Country Planning (General Permitted Development) (England) Order.
 - g) I have explained above that the Appellant was of the view that the permission for the Approved Outbuilding had lapsed in August 2014. This is because the works which had been carried out for the erection of the Existing Garage were not works for the commencement of the permission for the Approved Outbuilding but were simply works to implement the Appellant's permitted development rights.
 - h) I am aware that the Non-Material Application included the retention of the Existing Garage (with a modified pitched roof). However, that Non-Material Application had not been approved by the Council at the time the Existing Garage was erected.
 - i) The Appellant acknowledged at the Hearing that at the time the Existing Garage was erected it was not done for the purpose of commencing the permission for the Approved Outbuilding.
16. I therefore conclude, for the reasons explained above and as a matter of fact and degree, that the works carried out to facilitate the building of the Existing Garage did not comprise the commencement of the planning permission for the Approved Outbuilding. Accordingly, the permission for the Approved Outbuilding lapsed on the 18 March 2012.

Overall Conclusions

17. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of the erection of a one and half storey domestic outbuilding ancillary to main dwelling-house at 1 Hat Road, Leicester, LE3 2WF was well-

founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195(3) of the 1990 Act and dismiss the appeal.

Formal Decision

18. The appeal is dismissed.

Tim Belcher

Inspector

APPEARANCES

THE APPELLANT

Tony Smith BSc(Hons) – The Appellant

FOR BLABY DISTRICT COUNCIL

Georgina Isherwood BA(Hons), Dip Planning & Urban Conservation, MRTPI – Senior Planning Officer