

Appeal Decision

Site visit made on 15 June 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 11 July 2017

Appeal Ref: APP/B1930/X/17/3169981
184 London Road, St Albans AL1 1PL

- 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 John Kapantais against the decision of St Albans City and District Council.
 - The application ref. 5/17/0169, dated 23 January 2017, was refused by notice dated 6 February 2017.
 - 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 "new single storey porch to front of house".
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Decision

1. The appeal is dismissed.

Preliminary matters

2. There was no representative from the Council present at the site at the appointed time. After waiting for a short while, I proceeded to inspect the front of the appeal property from the front garden and the street on my own on an unaccompanied basis.
3. A certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant to this appeal and there is no planning application before me.
4. 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.
5. My decision is based on whether or not the proposed operation would be lawful if begun at the time of the application, which was 23 January 2017.

Main issue

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

7. The main issue turns on whether the proposed development would have amounted to permitted development at the time of the application.
8. Nos 184-202 London Road comprise a terrace of 2-storey dwellings of some age. The terrace is raised well above the level of the road and approached by a dozen or so steps at various points. Situated at the north-western end of the terrace, No. 184 is partly hidden from view by mature coniferous vegetation growing behind the roadside wall. It has an existing flat-roofed, predominantly glazed porch outside the front (inner) entrance door. The proposal is to replace this porch with one of brick and slate construction. A door would be located in the north-western side of the new porch. The sloping roof would be continued beyond this side of the porch by about 0.8 m in order to create a storm canopy outside the door. The canopy would be supported by a bracket.
9. Article 3(1) read with Schedule 2, Part 1, Class D of The Town and Country Planning (General Permitted Development) (England) Order 2015 (hereinafter "GPDO") grants planning permission for the erection or construction of a porch outside any external door of a dwellinghouse as permitted development subject to 4 limitations or criteria. One of these (limitation D.1 (b) of Class D) indicates that development is not permitted by Class D if the ground area (measured externally) of the structure would exceed 3 sq. m. The dispute between the parties concerns the application of this criterion to the proposal.
10. The Council's position is that the canopy structure should be included as part of the ground area; the whole porch structure would then fail to comply with limitation D.1 (b). If it is not included (the appellant's position), the porch would have a ground area (measured externally) of about 2.92 sq. m and would therefore comply with limitation D.1 (b).
11. There is some ambiguity in the interpretation of Class D. Unfortunately, the Technical Guidance titled *Permitted development rights for householders*, published by the government and last updated in April 2017, offers little assistance to readers wishing to understand more about the operation of Class D or how "a porch", "the structure" or "ground area" might be defined.
12. The Oxford Dictionary of English defines a porch as "a covered shelter projecting in front of the entrance of a building." Thus, a porch is often external to the walls of the main building and in functioning as projecting covered shelters, porches clearly exhibit various degrees of enclosure. Some are enclosed by walls, whilst some have little more than a roof canopy, supported by columns or brackets, extending from the main structure. A projecting canopy at a building's entrance therefore functions as "a covered shelter" (or porch), regardless of whether it is self-supporting, fixed by a bracket or brackets or supported by posts or pillars inserted into the ground.
13. I consider that the storm canopy proposed in the appeal scheme falls within the definition of a porch. Moreover, it would be an integral part of the roof of the whole structure. It would create a covered area of shelter that would not otherwise be present on the front elevation of the house, even though it could not and would not be used for additional storage or the like. The common-sense approach would be to treat the main enclosed structure and the canopy structure as the porch. The whole porch structure is covered by all parts of

Class D. Thus, the area underneath the projecting storm canopy should be included in the calculation of the ground area of the structure. It would clearly hover over or cover a ground area even though it would not touch the surface as such. The relevant part of the GPDO refers to the "ground area" and not to the "ground surface area".

14. With the storm canopy included, the ground area (measured externally) of the porch structure would rise to about 4.12 sq. m, thereby infringing limitation D.1 (b). The proposed development cannot therefore benefit from the deemed planning permission conferred by the GPDO.
15. I have reached this view on the balance of probabilities. In doing so, I have noted the Council's concern about the potential infilling of the canopy with a solid enclosure at a later date under Schedule 2, Part 1, Class A of the GPDO. This is purely speculative and is unlikely to be a practical option for the appellant or future occupiers given the presence of about three quarters of the sole ground floor window behind the canopy. This matter has little bearing on whether the proposal would meet all the criteria in Class D.

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