



Appeal Decision

Site visit made on 27 June 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 14 August 2017

Appeal Ref: APP/Y3615/X/17/3166958

Northlands, 88 Vale Road, Ash Vale, Hampshire GU12 5HS

- 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 Matthew Phillips against the decision of Guildford Borough Council.
 - The application Ref 16/P/02204, dated 10 September 2016, was refused by notice dated 20 December 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 a single storey side extension.
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Summary Decision: The appeal is dismissed.

Reasons

1. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
2. The background to this appeal is that on 9 September 2016 planning permission was granted for a two storey side extension to Northlands (Council Ref: 16/P/01347). The application now subject to this appeal was made on the following day. The drawings submitted with the application show the two-storey side extension approved under planning permission 16/P/01347, with the completed two-storey side extension shown on the 'Existing plans'. It is clear, therefore, that the proposal then before the Council and now before me is for the erection of a single storey side extension in a scenario whereby the two-storey side extension approved under planning permission 16/P/01347 had been fully completed in accordance with that permission.

3. At the time of my site visit, construction of a side extension to Northlands had commenced, broadly in the position of the two storey side extension approved under planning permission 16/P/01347. The side and rear walls had reached a height in excess of 1metre, although construction of the front elevation was yet to commence. Evidently, the building works were in progress but the extension under construction was not complete. Nevertheless, construction was sufficiently advanced to indicate that a material start has been made, ostensibly on the two storey side extension approved under planning permission 16/P/01347.
4. However, my site visit also revealed that the extension under construction goes beyond that approved under planning permission 16/P/01347. In terms of footprint and location, this additional work broadly correlates with the single-storey side extension proposed under the LDC application now subject to this appeal. Construction was less advanced than with the other part of the extension, but the walls were in part above ground level. Significantly, the partly constructed walls of this extension physically linked with the walls of extension also under construction, as described above.
5. It follows, therefore, that at the time of my site visit the construction in progress was not that of separate two-storey and single-storey side extensions. Construction of both parts of the extension is contemporaneous, such that it comprises a single building operation. In other words, the extension under construction is materially different from the two-storey side extension approved under planning permission 16/P/01347. In this respect, I concur with the Council that the extension under construction at the time of my site visit may be more properly described as a part two-storey, part single storey side extension combining, in effect, the two-storey side extension approved under planning permission 16/P/01347 and the single-storey side extension subject to this appeal.
6. The key point, however, is that the two-storey side extension granted under planning permission 16/P/01347 was not substantially complete on the day on which the LDC application made: i.e 10 September 2016. The corollary is that the scenario contemplated in the LDC application, namely a single-storey side extension added to a property previously extended by the two-storey side extension approved under planning permission 16/P/01347, did not exist on the date on which the LDC application was made. The single storey side extension proposed, and which the appellant seeks to show would have been lawful if began on the date on which the LDC application was made, by definition could not have been instituted or begun on 10 September 2016 because the two storey extension to which it would have been attached had not been completed on that date. For that reason alone, the single storey extension would not have been lawful on the date the application was made. I must therefore dismiss this appeal.
7. The Council have determined the application on the basis that the development proposed actually comprises a part two-storey, part single storey side extension. However, whilst I agree that the extension under construction may more properly be described in those terms, I consider that the Council's approach is flawed in this respect. Neither a local planning authority nor the Secretary of State have the power to modify the terms of an application made under Section 192 without prior agreement with the applicant. I have not been provided with any evidence that the applicant agreed to a change in the terms

of the application. I therefore consider that the application should have been determined on the basis of the single storey side extension shown on the application drawings albeit, for the reasons set out above, this would not have altered the outcome.

8. I have carefully considered whether I should seek to agree a change in the terms of the application with the appellant. However, this would represent a significant change in the overall description of the development and one which could have significant implications for other interested parties. Whilst the planning merits of the proposed development are not relevant to this appeal, nevertheless it would in my view be inappropriate to agree a significant change in the terms of the application where that change could have wider implications for others who have not been party to the agreed modification. I have therefore concluded that, in the interests of fairness, this appeal should be determined on the basis of the original description.

Conclusion

9. 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 construction of a single storey side extension at Northlands, 88 Vale Road, Ash Vale, Guildford, Hampshire GU12 5HS was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Paul Freer

INSPECTOR