



Appeal Decision

Site visit made on 5 July 2018

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2018

Appeal Ref: APP/T5150/X/17/3181673

93 Kenwyn Drive, London NW2 7NX

- 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 Dilip Thakor against the decision of the Council of the London Borough of Brent.
 - The application ref. 16/5313, dated 8 December 2016, was refused by notice dated 7 February 2017.
 - The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
 - The proposed development for which a certificate is sought is described at section 8 of the application form as "*Partial relocation of existing structure to trim back to 6M from original rear wall*".
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Decision

1. The appeal is dismissed.

Matters of clarification

2. An application for a certificate enables owners or others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.
3. A certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant in the context of an appeal made under section 195 of the 1990 Act as amended.
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. The test of the evidence is made on the balance of probabilities.
5. The description of the proposed development in the heading above is taken from the application form. The Council's decision notice states that the application is proposing the following: "*Certificate of lawfulness for existing alteration to rear extension to reduce the depth beyond the original rear wall to the dwellinghouse.*" This does not materially affect the appeal, except to say that it would have been more correct to refer to a *proposed* alteration.
6. The certificate application form and the appeal form indicate that the application was made under section 192 of the 1990 Act as amended, which relates to uses or operations proposed to be carried out and the Council issued a refusal notice

within the meaning of that section. The appeal form indicates that the proposed development had not been started at the time of the application. The application form states the opposite. I have approached this case on the basis that the structure (or rear extension) includes the shower room and covered canopy over the balcony as shown on the submitted plans and that the proposal to modify the structure, by trimming it back so that the overall extension depth is no more than 6 m from the original rear wall of the dwelling, had not been carried out at the time of the application or at the time of my visit.

7. The question of establishing the lawfulness or otherwise of what has been built comes within the ambit of section 191. But, as section 192 does not empower me to determine the lawfulness of existing development, my decision will be based on what was applied for under section 192. Put another way, the appeal before me is for the proposed development as shown on the plans rather than for what has been built on the site at any time and I have to determine whether the development proposed would have been lawful if it had begun at the date of the application. I note that the appellant made a separate application under section 191 which has the ref. 17/4630. The determination of such an application was a matter in the first instance for the Council. The application was refused but it is not the subject of this appeal.
8. An enforcement notice was issued on 17 July 2017 under ref. E/16/0664 alleging a breach of planning control in the erection without planning permission of an extension and a covered canopy to the existing single-storey rear extension of the appeal property. The appeal (ref. APP/T5150/C/17/3181677) against that enforcement notice is the subject of a separate decision.

Main issue

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

Reasons

10. The main issue turns on whether or not the proposed development would have amounted to permitted development at the time of the application. At that time permitted development rights were contained within the Town and Country Planning (General Permitted Development) (England) Order 2015 (hereinafter "GPDO"). Subject to limitations and conditions, Class A of Schedule 2, Part 1 of the GPDO permits the enlargement, improvement or other alteration of a dwelling house.
11. No. 93 Kenwyn Drive is a two-storey house situated at the end of a short terrace. The Council determined that even though the proposed single-storey structure would be trimmed back so that the overall depth of extension from the rear wall of the original dwelling house would be no more than 6 m, this would still fall foul of the limitation at paragraph A.1 (f) (i) of the GPDO. The relevant limitation there on the depth for single-storey extensions at the back of terraced houses is 3 m. I concur with the Council's approach.
12. A larger single-storey rear extension up to 6 m in depth as proposed could be considered here under paragraph A.1 (g) (i) of the GPDO but this is subject to the prior approval procedure set out at paragraph A.4. The requirement to seek prior approval is imposed as a pre-commencement condition. There is no provision for a retrospective grant of prior approval. A certificate cannot be

granted for the proposed development under section 192 if the prior approval condition has not been complied with by the date of the application. The property does not have formal prior approval for a larger home extension as such.

13. Significantly, the appellant's final response does not pass comment on paragraphs 3.0 to 3.5 of the Council's statement of case which cover its handling of the certificate application. The comments provided on the appeal form at section H and the documents submitted with the certificate application (including a doctor's letter and the design and access statement) are noted but they do not really address the relevant legislation in the GPDO upon which this appeal turns. It is unfortunate that the appellant and his family relied upon a builder who seems to have disappeared and that the wet room and canopy to be modified were first built after a misunderstanding about permitted development rights. I am sympathetic to the fact that the appellant and his wife find the ground floor wet room extremely useful for their ongoing medical conditions.
14. However, I have to agree with the Council that there would a failure to meet a limitation applying to such development, so that the proposed development would not amount to permitted development and would not benefit from the planning permission granted through the GPDO. On the balance of probabilities, I find that the proposed development would not have been lawful if begun at the time of the application.
15. For the reasons given above I conclude that the Council's refusal to grant a certificate 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 as amended.

Andrew Dale

INSPECTOR