



Appeal Decision

Site visit made on 13 August 2019

by Jean Russell MA MRTPI

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

Decision date: 01 October 2019

Appeal ref: APP/Q5300/X/18/3217597

125 Conway Road, Southgate, N14 7BH

- The appeal is made by Mr Nick Khinch under section 195 of the Town and Country Planning Act 1990 against the decision of Enfield Council to refuse an application for a certificate of lawful use or development (LDC).
 - The application (ref: 18/03492/CEU) was dated 10 September 2018 and refused by notice dated 12 November 2018.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990, and the existing development for which an LDC is sought is described as a 'rear single storey flat roof extension 3.9m deep x 6.099m wide'.
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DECISION

1. The appeal is dismissed.

Preliminary Matters

2. A 'retrospective planning application for the construction of a single storey rear extension' (ref: 18/03494/HOU) was made and refused on the same dates as the LDC application. So far as I am aware, the appellant has not appealed against the refusal of the '2018 planning application'.

Main Issue

3. From the wording of s191(1) of the Town and Country Planning Act 1990 (TCPA90) and the evidence before me, the main issue is whether the operations which had been carried out by the date of the LDC application, to construct the rear single storey flat roof extension, were lawful because no enforcement action could then be taken. This is a question to be determined on the facts and law; the merits of the extension are not before me. The onus is on the appellant to make his case on the balance of probabilities.

Reasons

4. Where building operations have been carried out without the required planning permission, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed; s171B(1) of the TCPA90. The 'four year' or material date in this case is 10 September 2014.
5. The Council does not dispute that a rear single storey flat-roofed extension to the appeal house was substantially completed by June 2007. However, it is also common ground that further building operations took place following 'the cold winter of 2017/18'. The Council claims that the works 'resulted in a materially larger rear addition' which was not substantially completed by 10 September 2014.
6. The appellant and his wife or partner signed an affidavit in the presence of solicitors on 10 September 2018; this evidence carries significant weight. The

couple state that an extension was built between November 2006 and June 2007 in accordance with plans appended to the affidavit; the extension has always accommodated a kitchen; and appended family photos show the extension in use more than four years before the LDC application.

7. The plan appended to the affidavit, entitled 'Figure 1', shows the extension as spanning the full width of the house and projecting some 3.9m from the original rear elevation. A 'shed' which contained a utility room was attached to the left-hand side of the extension; it was some 1m wide and another 3m deep.
8. The family and aerial photographs show that the extension was built in accordance with Figure 1 and existed as such for more than four years. A neighbour confirmed in another affidavit that, when they purchased their property in August 2013, there was a single storey rear extension at the appeal house with the dimensions shown on Figure 1. Unfortunately, none of this evidence helps the appellant because it does not tell me what happened during the 2018 building works.
9. The form and a supporting statement¹ submitted with the retrospective 2018 planning application show that a further addition was built with 'a maximum depth of 2042mm from an existing extension...and a width of 4729mm to connect with the existing [shed]'. The extra depth was provided through the construction of a 2m wall to lengthen the right-hand side of the extension.
10. The supporting statement also shows that the works included the removal of the existing rear elevation to the extension, so that the new addition would be fully integrated; the replacement of the 'old timber and felt roof' to the extension and its replacement by a single fibreglass roof to the extension as enlarged; the insertion of a 2.6 x 2.2m pyramid-shaped sky 'lantern' into the new roof; and the installation of bifold doors within what is the new rear elevation to the extension.
11. I deduce from the appellant's evidence that the extension was profoundly altered throughout and made some 50% deeper, so that it would project some 5.9m from the original rear wall of the house and end just 1m short of the shed. The left-hand side of the extension and interior of the shed may be unchanged, but the appellant has not explained why that would make the works which did take place less than significant. It appears probable that the extension was substantially reconstructed as a matter of fact and degree.
12. The LDC application was made for existing development; the drawing entitled 'LDC Existing Plans & Elevations' showed the 'existing extension' exactly as in Figure 1. However, the appellant's other evidence suggests that there was no 'rear single storey flat roof extension 3.9m deep x 6.099m wide' on 10 September 2018. The operations which had been carried out by that date had rather caused the extension to be some 5.9m deep – and the appellant has not shown that the time for taking enforcement action against those operations had expired.
13. The appellant makes no case that planning permission was not required or was granted for the 5.9m deep extension. I conclude that the existing rear single storey flat roof extension was not lawful, on the balance of probabilities, on 10 September 2018. The Council's refusal to grant an LDC was well-founded and the appeal fails. I will exercise accordingly the powers transferred to me in s195(3) of the TCPA90.

Jean Russell

INSPECTOR

¹ Design and Access (D&A)/Heritage Statement