



Appeal Decision

Site visit made on 12 November 2019

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

Appeal Ref: APP/V5570/X/18/3215762

Garden Cottage, 38D Aberdeen Road, Islington, London N5 2XD

- 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 & Mrs Bryan & Carla Stevens against the decision of the Council of the London Borough of Islington.
 - The application Ref P2017/4885/COL, dated 11 December 2017, was refused by notice dated 27 February 2018.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which an LDC is sought was described as: *"Request Certificate of Lawfulness to certify that the approved planning application 89/0416 was implemented on 4th May 1994. Documents submitted also to confirm the change of address of the property from 17a Highbury Grange to; Garden Cottage, No.38d Aberdeen Road."*
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Decision

1. The appeal is allowed and attached to this decision is an LDC that describes the operations which are considered to be lawful.

Procedural Matters

2. The description of development on the Council's decision notice does not provide details of the relevant planning permission and the description provided on the application form includes superfluous wording. As such I have used an amended wording for the purposes of the attached LDC.

Main Issue

3. The main issue is whether a trench dug at the appeal site was sufficient to constitute the lawful implementation of planning permission 89/0416.

Reasons

4. On 11 May 1989 planning permission was granted by the Council for extensions to a dwelling house on the appeal site. At that time the appeal site was known as 17a Highbury Grange. The evidence indicates its address has since changed to 38D Aberdeen Road. The planning permission was granted subject to a condition that the development must be commenced not later than the expiration of five years from the date of the permission.
5. Section 56(1) of the above Act states that, if the development consists of the carrying out of operations, development of land shall be taken to be initiated at the time when those operations are begun. Section 56(2) confirms that

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. Section 56(4) confirms that a 'material operation' includes the digging of a trench which is to contain the foundations, or part of the foundations, of a building.

6. The evidence indicates that by 10 May 1994 a trench had been dug on the appeal site that was to contain part of the foundations of one of the extensions for which planning permission had been granted by the Council in 1989. That being the case, planning permission 89/0416 was implemented prior to the expiration of five years from the date of the permission.
7. Based on the drawings provided, I am satisfied the location of the trench was in accordance with the permission in respect of the single storey extension shown on the plans provided which were approved in 1989. Moreover, based on the drawings and photographs provided, as a matter of fact and degree, I am satisfied the trench dug was a material operation. It was of a substantial width and depth and so it was not merely de minimis or trivial.
8. The Council has commented that the scale of the trench was minor in comparison to the approved scheme but there is no evidence to indicate this is a relevant test under the above legislation or in light of any relevant case law.
9. I appreciate that no application for Building Regulations approval may have been received for the operations carried out. But there is no evidence that satisfying Building Regulations is a relevant factor for determining whether a planning permission has been implemented.

Conclusion

10. For the reasons given above I conclude, on the evidence available to me, that the Council's refusal to grant an LDC in respect of the implementation of planning permission 89/0416 on 4 May 1994 at Garden Cottage, 38D Aberdeen Road, Islington, London N5 2XD was not well-founded. As such the appeal succeeds and I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

L Perkins

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 11 December 2017 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The digging of the trench described in this application was sufficient to constitute the lawful implementation of planning permission 89/0416.

Signed

L Perkins

INSPECTOR

Date: 18 November 2019

Reference: APP/V5570/X/18/3215762

First Schedule

Implementation of planning permission 89/0416 on 4 May 1994

Second Schedule

Land at Garden Cottage, 38D Aberdeen Road, Islington, London N5 2XD

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 18 November 2019

by **L Perkins BSc (Hons) DipTP MRTPI**

Land at: Garden Cottage, 38D Aberdeen Road, Islington, London N5 2XD

Reference: APP/V5570/X/18/3215762

Scale: Not to scale

