The Planning Inspectorate

Appeal Decisions

Site visit made on 26 November 2019

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 10 December 2019

Appeal A: APP/M5450/X/18/3215942
Linden House, South View Road, Pinner HA5 3YD

- 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 Amarjit Singh Hundal against the decision of the Council of the London Borough of Harrow.
- The application Ref P/2132/18, dated 8 June 2018, was refused by notice dated 18 July 2018.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
- The development for which a certificate of lawful use or development is sought is the installation of a swimming pool enclosure.

Appeal B: APP/M5450/X/18/3215973
Linden House, South View Road, Pinner HA5 3YD

- The appeal is made under section 195 of the 1990 Act against a refusal to grant a LDC.
- The appeal is made by Mr Amarjit Singh Hundal against the decision of the Council of the London Borough of Harrow.
- The application Ref P/1893/18, dated 2 May 2018, was refused by notice dated 12 July 2018.
- The application was made under section 192(1)(b) of the 1990 Act.
- The development for which a certificate of lawful use or development is sought is installation of a retractable Perspex roof over a tennis court.

Decisions

Appeal A and Appeal B

1. The appeals are dismissed.

Procedural Matters

2. For the avoidance of doubt, I should explain that the planning merits of the developments are not relevant in these appeals which relate to applications for LDCs. My decisions rest on the facts of the cases, on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability in each case.

3. For clarity, I have taken the descriptions of the developments in the banner headings above from the Council's Decision Notices. The application forms for both LDCs state that they were submitted for proposed development. As such, I have dealt with both appeals on that basis.

4. The Council's decision notice in relation to the development proposed as part of Appeal A cited drawing number LIN_V1.0_004 but this was not submitted as part of the appellant's evidence. However, at my request the Council provided a copy of that drawing and I have dealt with that appeal on this basis.

5. Both appeals have been submitted by the appellant and they relate to the same property. Therefore, to avoid duplication I have dealt with them together in my reasoning below except where otherwise indicated.

Both Appeals - Main Issue

6. The main issue in both appeals is whether the Council's decisions to refuse the grant of LDCs were well-founded.

Reasons

7. The appeal site comprises a large detached building and its grounds. I observed that the main building appears to be currently vacant and the grounds are generally unkempt and overgrown. Building works appear to have commenced on Linden House and I have no evidence to indicate that these works would not renovate the building to enable it to be used as a dwellinghouse.

8. The development proposed as part of Appeal A is the installation of a swimming pool enclosure which the evidence before me describes as temporary light glazing. The submitted drawings appear to indicate that the enclosure would be a frame supported by vertical posts with infill panels between the posts. The development proposed as part of Appeal B is a retractable Perspex roof over the existing tennis court. The submitted drawings indicate that this roof would be temporary and supported on vertical posts.

9. Buildings are defined by Section 336(1) of the 1990 Act as including any structure or erection and any part of a building but not plant or machinery within a building. The Courts have held that structures which might not ordinarily be described as 'buildings' can be included in the definition. These include marquees, polytunnels and other similar structures.

10. There is little evidence before me to indicate in what way the swimming pool enclosure would be temporary. Nevertheless, given the size of the proposed enclosure even with 'plastic' or 'polycarbonate' sheeting forming the infill panels/glazing the overall enclosure would, in my experience, have a considerable weight. Moreover, it is more than likely that it would be anchored or fixed to the ground in some way. There is also little evidence to indicate in what way the retractable roof would be temporary. However, even though its main component would be Perspex given the size of the roof structure combined with the mechanisms to enable the retractable function it is highly likely that it would be of considerable weight and would be anchored into the ground.

11. As such, it is likely that the enclosure and the retractable roof would remain in position for some time and therefore would have a degree of permanence. Taking into account all of the above, as a matter of fact and degree I consider that the swimming pool enclosure and retractable roof can be treated as 'buildings'.

12. There is no dispute that planning permission was granted in 1991[1] for a dwelling and that this permission was implemented by the construction of Linden House (1991 permission). Condition No 6 attached to the planning permission states that *'pursuant to Article 3(4) of the Town and Country Planning General Development Order 1988 the provisions of Article 3(1) and Part 1 (Classes A to E) of Schedule 2 to the said order (relating to development within the curtilage of the dwelling house) shall not apply to any dwellinghouse to which this permission relates and no such development within the curtilage of any such dwellinghouse shall be carried out without the permission of the local planning authority being first obtained'*.

13. In order to benefit from any planning permission granted by Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), the development must not be contrary to any condition on an existing planning permission; Article 3(4). Here, even though condition No 6 relates to the Town and Country Planning General Development Order 1988 (GDO 1988) due to Section 17(2) of the Interpretation Act 1978 the condition has a continuing effect in respect of the GPDO.

14. Moreover, even though the appellant has cited a subsequent planning permission[2] that permission relates to extensions to Linden House and not its replacement. Therefore, the 1991 permission is still extant on the site and I have no evidence to indicate that condition No 6 has been removed or varied.

15. Furthermore, the appellant considers that condition No 1 of the 1991 permission means that the permission is time limited to only 5 years from the date of it and the conditions are only applicable for those 5 years. In support of this the appellant has cited a judgement[3]. However, condition No 1 only restricts the commencement of the development to five years and the planning permission is not time limited or temporary. Therefore, the judgement is not relevant to the appeals before me.

16. Consequently, condition No 6 restricts development within the curtilage of Linden House. There is no dispute that the swimming pool enclosure and the retractable Perspex roof over the tennis court are within the curtilage of Linden House. I have found that both structures can be treated as buildings. As such, they are development for which express planning permission is required, and that could only be granted on application made to the local planning authority in the first instance.

Other matters

17. I note that a number of the third parties have stated that the appeal site is subject to a direction under Article 4 of the GPDO. However, I have no specific evidence before me to support this and given my findings above it would not alter my decision.

18. The appellant has cited 2 appeal decisions[4] on the appeal site with regard to the fact that within those decisions the Inspector stated that within paragraph 7 that *'…outbuildings do not form part of the original dwelling and could be replaced under permitted development rights.'* Nevertheless, I do not know

[1] Ref No: LBH/F/43352/W/311091PA
[2] Ref No: P/0708/18
[3] Avon Estates Ltd v Welsh Ministers & Ceredigion CC [2011] EWCA Civ 553
[4] Ref Nos: APP/M5450/W/15/3002236 & APP/M5450/W/15/3002473

whether the 1991 permission was before that Inspector. In any case, I am required to determine the appeals based on the evidence before me.

Conclusions

19. For the reasons given above, I conclude that the Council's refusals to grant LDCs in respect of the installation of a swimming pool enclosure and the installation of a retractable Perspex roof over a tennis court were well-founded and that the appeals should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D. Boffin

INSPECTOR