
Appeal Decision

Site visit made on 20 November 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 13th December 2019

Appeal Ref: APP/F5540/X/19/3223393

Land at 76 St Stephens Road, Hounslow, Middlesex, TW3 2BN

- 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 lawful development certificate (LDC) by the Council of the London Borough of Hounslow dated 13 August 2018.
- The appeal is made by Mr Daljit Dhillon.
- The application ref. 00992/76/LAW1 was dated 18 May 2018.
- The application was made under section 192 (1) (b) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is confirmation of the implementation of planning permission 00992/76/P10 for demolition of existing garage and erection of two storey flank extension to dwellinghouse.

Summary of Decision: the appeal is dismissed

Preliminary Matters

1. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

3. The appeal concerns whether planning permission 00992/76/P10 has been lawfully implemented.
4. The appeal site is a two storey semi-detached property. Planning permission ref. 00992/76/P10 (Permission P10) has been granted for the demolition of existing garage and erection of two storey flank extension to dwellinghouse. Condition 1 of Permission P10 states that the development shall be commenced not later than the expiration of five years from the date of Permission P10. Permission P10 is dated 20 April 1999. The five year period for the purposes of condition 1 therefore expires on 20 April 2004.

5. Condition 10 of Permission P10 states that 'no development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the position, design, material and type of boundary treatment to be erected'. An application to discharge this condition was received by the Council in 2009.
6. The Appellant's evidence does not need to be independently corroborated in order to be relied upon but it does need to be precise and unambiguous. The Council argues firstly, that Permission 10 has not been implemented within the relevant five year period and secondly, that even if was implemented in time, it has been overridden by the grant and implementation of a mutually inconsistent permission. I shall address each of these arguments in turn.
7. Looking firstly at implementation of Permission P10. Demolition of the garage would constitute initiation of development for the purposes of section 56 of the Act. The issue in dispute is whether condition 1 of Permission P10 has as a matter of fact been met and this turns on whether the garage was demolished within the five year period required by condition 1.
8. The Appellant asserts that the garage was demolished prior to June 2003 and before the works to the roof began. The Appellant submits drawing number STS-EX-01 which contains an OS extract/red line site plan. It shows the position of the garage to the side of the property but no single storey extension. He relies on an aerial photograph dated June 2003 and an affidavit in which he swears that he commissioned one of the tenants to demolish the garage before starting the building works to install a pitch roof on the existing rear extension. The tenant also provides a sworn statement confirming that he demolished the garage in early 2003 before works to the roof commenced. A Building Control completion certificate was issued on 28 July 2003 for replacement pitched roof over existing flat roof and a full plans approval notice for side extension dated January 2005.
9. The Council seek to cast doubt on the Appellant's version of events. They argue that the Building Control completion certificate concerns only 'a replacement pitched roof over existing flat roof' and that this was not the subject of Permission P10. But Permission P10 includes an approved drawing that shows the pitched roof to the rear extension and it includes a condition that the development be carried out in accordance with approved plans. I therefore cannot accept the argument that the pitched roof is not covered by Permission P10. There is nothing before me that casts serious doubt on the evidence of the Appellant and in particular the tenant who swears that he demolished the garage in early 2003. I note the disagreement as to the aerial photograph but I find the photograph to be inconclusive and it does not alter my conclusions on the main issue.
10. The Council also argue that condition 10 is a condition precedent and that it was not discharged until after the relevant five year period. But condition 10 does not concern something that goes to the heart of the Permission but a minor issue of boundary treatment. In this case and taking into account the case law before me I conclude that condition 10 is not a condition precedent. It follows that the failure to seek discharge of condition 10 before the expiry of the relevant five year period does not prevent lawful implementation of Permission P10.

11. Turning to the argument that implementation of Permission P10 has been overridden by the issue and implementation of a mutually inconsistent permission.
12. Planning permission for the erection of a part two storey part single storey side extension to the main House in Multiple Occupation has been granted (ref 00992/76/P15) (Permission P15). I note that planning permission ref. 00992/76/P16 for the same development has been granted on appeal.
13. It is established law that where two planning permissions exist in relation to the same site both cannot be implemented if they are mutually inconsistent. The Appellant says that there is no lawful certificate to confirm the lawfulness of implementation of Permission P15. Whilst this is correct the burden of proof rests upon the Appellant in this appeal and it has not been adequately discharged in relation to this issue. The Council has cast doubt on the whether Permission 10 is capable of implementation following the issue of a mutually inconsistent permission. The Appellant has not provided sufficient evidence to counter the Council's argument. I cannot be satisfied that Permission P15 has not been lawfully implemented with the consequence that Permission P10 is no longer capable of taking effect.
14. I have taken into account the correspondence before me between the Appellant and the Council. The correspondence does not alter my conclusions.
15. For the reasons given above I conclude, on the evidence now available that the Council's refusal to grant a certificate of lawful use or development in respect of the implementation of planning permission 00992/76/P10 for demolition of existing garage and erection of two storey flank extension to dwellinghouse at 76 St Stephens Road, Hounslow, Middlesex, TW3 2BN was well-founded, and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

16. The appeal is dismissed.

S. Prail

Inspector