



Appeal Decision

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

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

Decision date: 23 December 2019

Appeal Ref: APP/W4705/X/18/3217784

73 St. Margarets Avenue, Bradford BD4 9BE

- 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 Derek Somma against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 18/03042/CLE, dated 16 July 2018 was refused by a notice dated 13 September 2018.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a garage, conservatory and small front porch.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operations which are considered to be lawful.

Application for costs

2. An application for costs was made by Mr Derek Somma against the City of Bradford Metropolitan District Council. This application is the subject of a separate decision.

Procedural Matter

3. Section 191 (4) of the Town and Country Planning Act 1990 as amended (the Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matters described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal.
4. The appeal submission includes an appendix containing a number of invoices for building materials which were not included with the original application. The Council have had an opportunity to comment on them. The purpose of the LDC procedure is to arrive at an objective decision based on the best facts and evidence available at the time the decision is taken. I have therefore taken all the evidence submitted with the application, and the building material invoices, into account in making my decision.

Reasons

5. In order for a LDC to be granted under section 191 of the 1990 Act, the burden of proving relevant facts in this appeal rests on the appellant, and the test of the evidence is the balance of probability. If there is no evidence to contradict or make the appellant's version of events less than probable and the appellant's evidence alone is sufficiently precise and unambiguous, a LDC should be granted.
6. The main issue is whether the Council's refusal to issue a LDC is well-founded. That turns on whether the appellant can demonstrate, on the balance of probability, that the garage, porch and conservatory were substantially complete on or before the 16 July 2014. The local planning authority were not satisfied from the evidence submitted with the application and records held by them, that it had been conclusively demonstrated that these structures have been in situ for a period of more than four years.
7. The appellant's application form (dated 16 July 2018) states that the garage, conservatory and porch were built onto his property about four or five years ago. Albeit in answer to Question 7 on the same form he states that the buildings works were substantially completed on 1 August 2014.
8. In support of the application the appellant provided pro-forma letters signed by five of his neighbours which state that the application buildings have been in existence for at least four years from the date of the letter. The letter is dated 21 August 2018. This evidence alone does not demonstrate that the buildings were substantially complete on or before the relevant date of 16 July 2014. Similarly, the google street image which has been provided to show the garage and porch in situ is dated September 2014, which is also after the relevant date of 16 July 2014.
9. However, the appellant has included with his appeal a collection of invoices for building materials. These are all dated between March and July 2013 and relate to materials delivered to 73 St Margarets Avenue. The materials include a substantial number of concrete blocks, bricks, sand/cement, concrete lintels and rainwater goods. In addition, there are designs and invoices for the timber roof trusses for the garage. Whilst those invoices do not demonstrate that the works were carried out, it is clear from the September 2014 image that these materials have been used in the construction of the buildings. Those buildings are shown to have been completed in the September 2014 image and there is no evidence of building materials still being stored on the land.
10. I appreciate that the September image and letters dated 21 August 2018 do not provided indisputable evidence that the buildings were substantially complete on 16 July 2014. However, when taken together with the dates of the building material invoices and having regard to the neighbours' letters which state that the buildings have been in existence for **at least** four years (bold typeface is my emphasis), it seems to me that on the balance of probability they were substantially complete on the 16 July 2014. It is highly likely that the date of the letters from the neighbours was the date when appellant realised that he needed some affirmation because it is after the date of the submitted application. I suspect that he did not understand the importance of confirming the four years prior to the application date. Moreover, the only reason the Council gave in their officer report as a reason to

dispute the evidence was their interpretation of the September 2014 image, which they have since conceded was wrong.¹

Conclusion

11. Having regard to all the evidence submitted and bearing in mind the relevant test of the evidence is on the balance of probability, with no evidence from the Council that would contradict or otherwise make the appellant's version of events less than probable, I consider that the appellant has made his case. Thus, for the reasons given above, I conclude, on the evidence now available, that the Council's reason for refusal to grant a LDC in respect of the garage, porch and conservatory at 73 St. Margarets Avenue, Bradford was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR

¹ Email correspondence to Planning Inspectorate from Planning Officer, City of Bradford MBC, dated 28 November 2019.



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 the 16 July 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and in black 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 operations were substantially completed more than four years prior to the date of the Lawful Development Certificate and no enforcement action may then be taken in respect of them.

Signed

Elizabeth Pleasant

INSPECTOR

Date: 23 December 2019

Reference: APP/W4705/X/18/3217784

First Schedule

Garage, conservatory and small front porch as indicated on the location plan.

Second Schedule

Land at 73 St. Margarets Avenue, Bradford BD4 9BE

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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: 23 December 2019

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Scale: NOT TO SCALE

