



Appeal Decision

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th March 2020

Appeal Ref: APP/T5720/D/19/3242628
64 Henfield Road, London, SW19 3HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class A, Paragraph A.4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Ms Jing Xie against the decision of the Council of the London Borough of Merton.
 - The application Ref: 19/P/2905 dated 6 August 2019, was refused by notice dated 2 October 2019.
 - The development proposed is demolition of existing conservatory to build a 6 m single storey rear extension.
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Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 1, Class A, Paragraph A.4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the demolition of existing conservatory to build a 6 m single storey rear extension at 64 Henfield Road, London, SW19 3HH in accordance with the application Ref 19/P2905, dated 6 August 2019 and the details submitted with it, including Plans Nos. A-01 Rev D, A-02 Rev D, A-03 Rev D, A-04 Rev D, A-05 Rev D, A-06 Rev D, A-07 Rev D, A-08 Rev D and B-01 Rev D, pursuant to Article 3(1) and Schedule 2, Part 1, Class A, paragraph A.4(2) of the GPDO.

Application for costs

2. An application for costs was made by Ms Jing Xie against the Council of the London Borough of Merton. This application is the subject of a separate Decision.

Procedural Matters

3. The Council's failure to refuse the application for prior approval within the statutory period means that the effect of the proposed development on the living conditions of the occupiers of adjoining premises is not a matter before me for consideration. There was therefore no need for me to visit the site.

Reasons

4. The prior approval application was submitted and validated by the Council on 6 August 2019. The Council consulted the owners / occupiers of adjoining premises in accordance with condition (5) of paragraph A.4 of the GPDO. The

Planning Officer's report refers to the receipt of a comment raising concern as to the impact on daylight. The Council subsequently refused prior approval on the basis of the effect on the living conditions of the occupiers of 62 Henfield Road by notice dated 2 October 2019.

5. However, condition (10) of paragraph A.4 of the GPDO sets out that the development must not begin before the receipt by the developer from the local planning authority of written notice that their prior approval is not required or is given, or the expiry of 42 days following the date of the receipt by the local planning authority of the information referred to in sub-paragraph (2) of paragraph A.4 without the local planning authority notifying the developer as to whether prior approval is given or refused.
6. The period of 42 days from 6 August 2019 expired on 16 September 2019, as noted on the Planning Officer's report. The Council accepts, in its rebuttal of the appellant's costs application, that it did not notify the appellant within the 42 day period whether prior approval was given or refused. Prior approval is therefore deemed to have been granted.
7. Nevertheless, the appellant should note that the development can only lawfully proceed if constructed or carried out in accordance with the submitted plans and the conditions and limitations imposed on the planning permission granted by the GPDO.

Other Matters

8. I note the concern of the occupier of a neighbouring property regarding the potential loss of daylight. However, as explained above, the Council's failure to refuse the application for prior approval within the statutory period means that the effect of the proposed development on the living conditions of the occupiers of adjoining premises is not a matter before me for consideration.

Conclusion

9. For the reasons given above, and having regard to the other matters raised, the appeal is allowed as prior approval is deemed to be granted.

Martin Small

INSPECTOR