

Appeal Decision

Site visit made on 26 February 2020

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 16th March 2020

Appeal Ref: APP/W1905/X/19/3237576

3 The Brambles, Crossbrook Street, Cheshunt, Hertfordshire EN8 8JD

- The appeal is made by Colin Pereira under section 195 of the Town and Country Planning Act 1990 against a refusal by Broxbourne Borough Council to grant a lawful development certificate.
 - The application Ref: 07/19/0240/LDP, dated 12 March 2019, was refused by notice dated 25 April 2019.
 - The application was made under section 192(1)(b).
 - The development for which the certificate was sought is a loft conversion.
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Decision

1. The appeal is dismissed.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the loft conversion would be lawful if begun at the time of the application for the certificate. The planning merits of the loft conversion are not relevant to the appeal and there is no planning application before me that relates to it or to the planning conditions affecting the property.
 3. The Council refused the application for the following reason: -

"The permitted development rights for this property have been removed under the terms of the original permission for the house. Therefore, planning permission is required to extend the property".
 4. The Council granted planning permission for the construction of the property on 16 February 1982 subject to eleven conditions (Ref. No. 7/874-81). Condition 6 is as follows: -

"6. Notwithstanding the provisions of Article 3 of the Town and Country Planning General Development Order[s] 1977 to 1981, no development of the types described in Class I, 1(a)(b)(c)(d)(e), 2(a)(b)(c) and 3(a)(b)(c)(d) of Schedule 1, other than that hereby permitted, shall be undertaken without the prior written approval of the Local Planning Authority."
 5. The reason given for the condition is "In order to safeguard the character and visual amenities of the locality". This reason is consistent with the fact that
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- permission was being granted for backland development in a location where space around the site is restricted.
6. Class I.1 relates to the "enlargement, improvement or other alteration of a dwellinghouse" and therefore includes loft conversions. Class I.2 relates to porches and Class I.3 relates to outbuildings.
 7. The appellant maintains that the condition is no longer enforceable because the Town and Country Planning General Development Orders 1977 to 1981 have been revoked and the condition has not been drafted so as to incorporate the replacement Orders, as such conditions usually are. He therefore claims that he is entitled to exercise the permitted development rights contained in the current Order, which is the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 8. The officer's report indicates that the loft conversion would comply with the criteria in the 2015 Order which relate to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Article 3(4) of the 2015 Order, however, indicates that such development is not permitted if it would be "contrary to any condition imposed by any planning permission".
 9. The terms of the condition are clear and emphatic in my view. The condition prevents any enlargement, improvement or other alteration of the property taking place without the Council's prior written approval; and it declares that this is the case notwithstanding Article 3 of the 1977 to 1981 Orders, which would have granted permission for certain developments of this type. Applying the principles set out by the Court of Appeal in *Dunnett Investments Limited v Secretary of State for Communities and Local Government and East Dorset District Council* [2017] EWCA Civ 192, I consider that in the present case it is not essential, in order for the condition to be enforceable, for it to refer as well to Orders revoking and replacing the 1977 to 1981 Orders or, indeed, for it to refer to any Orders at all.
 10. For the above reasons, I have concluded that the loft conversion would not be lawful if begun at the time of the application for the certificate since it would be contrary to Condition 6. I am satisfied that the Council's refusal of the application is well-founded and the appeal has therefore been dismissed.

D.A.Hainsworth

INSPECTOR