
Appeal Decision

Site visit made on 24 February 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 19 March 2020

Appeal Ref: APP/L5240/X/19/3238690

13A The South Border, Purley CR8 3LL

- 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 Mrs K Patel against the decision of the Council of the London Borough of Croydon.
- The application Ref 18/05921/LP, dated 6 December 2018, was refused by notice dated 18 April 2019.
- The application was made under section 192(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 described as 'It is proposed to affix a wire and plastic floral replica to the authorised gates at the above named address'.

Summary Decision: The appeal is dismissed.

Procedural Matters

1. I have taken the description of development in my banner heading above from the covering letter submitted with the application as none was given on the application form itself.
2. I sought comments from the parties on whether they considered that the development proposed would represent the carrying out for the alteration of any building of works which do not materially affect the external appearance of the building, as neither party had addressed this issue in detail in their representations. No further comments were made by the appellant. The Council's comments have been taken into account in my decision.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a lawful development certificate (LDC) was well-founded. This will turn on whether the proposal represents development requiring planning permission.

Reasons

The proposed development

4. The proposed development comprises the affixing of a metal frame, PVC coated welded mesh and faux ivy to the front gates of the appeal property as a single operation. The gates themselves are adjacent to the road and are some 2m in height, being attached to taller gateposts either side.

Legal framework

5. Section 55(1) of the Town and Country Planning Act 1990 as amended (1990 Act) states that 'development' (which requires planning permission) means the carrying out of building, engineering, mining or other operations or the making of a material change in the use of land. Section 55(1A) of the 1990 Act states that 'building operations' includes demolition, rebuilding, structural alterations or additions to buildings, and other operations normally undertaken by builders. Section 55(2) then excludes certain operations from the definition of development, including works for the maintenance, improvement or other alteration of any building which only affect the interior or do not materially affect the external appearance of the building. Section 336 of the 1990 Act defines the word 'building' as 'any structure or erection'.
6. Case law¹ has clarified that 'operations' for the purposes of the Act are essentially activities which result in some physical alteration to the land which has some degree of permanence, and that there are three primary factors which are decisive of whether something is a building: size, permanence and physical attachment.

Whether development

7. Much of the parties' cases focus upon whether the proposed development would represent a 'building' and thus whether the works proposed would be a 'building operation' for the purposes of the 1990 Act.
8. However, a finding on this point would not of itself mean that the proposal does not represent operational development under s55 of the 1990 Act. The definition of operational development in s55 refers to 'building, mining *or other operations*' [my emphasis]. S55(2) excludes from the definition of development *operations* for the maintenance/improvement/alteration of a building which do not materially affect the external appearance of the building.
9. It follows that if the proposal represents operations for the improvement/alteration of a building which would materially affect its external appearance, this would constitute development.
10. As to the 'building' in question as proposed to be improved/altered, the brick gate posts are physically attached to the metal gates and together are attached to the ground. They are significant in size and have permanence in a planning context. Thus, as a matter of fact and degree, they represent a structure or erection and so a 'building' as defined in s336 of the Act. The metal frame, mesh and faux ivy would be physically attached to the gates and would change its outward appearance, so represent an alteration to the gates as part of a 'building' as defined.
11. As to whether the proposal would be an improvement/alteration which would *materially* affect the external appearance of the building, the proposed frame and mesh would effectively fill the present spacing in the metal bars of the gates. Although of such a size as to be able to be assembled away from the site, nonetheless, it would be of substantial size relative to the gates and gate

¹ Including *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385; *James v Brecon CC* [1963] 15 P&CR 20; *Barvis v SSE* [1971] 22 P&CR 710; *Parkes v SSE* [1979] 1 All ER 211; and *Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No. 2)* [2000] EWCA Civ 5569.

- posts. It would thus add noticeable additional massing to the building, as defined.
12. The appellant accepts that the cassette within which the mesh is to be sited 'may be affixed permanently' but submits that the proposal would be a 'temporary' structure, capable of being removed fairly easily and quickly with a screwdriver and that it is intended that the mesh would be removed and changed on a regular basis. There are though no detailed submissions setting out as to how regularly in practice this would be likely to be removed, nor any justification as to why it would be likely to be removed with any frequency.
13. As such, on the evidence before me, I find as a matter of fact and degree that the proposed development would result in a physical alteration to the land which would have some degree of permanence and would so would represent an operation which would materially affect the external appearance of the building, as defined.
14. I do not consider that it follows from my assessment that rotary clothes lines/hanging baskets/mail boxes would represent development. It is a matter of fact and degree in each case as to whether works represent operational development, and as to whether, if applicable, they would materially affect the external appearance of a building.
15. Thus I find that the proposal would represent operational development comprising works for the improvement/alteration to a building which would materially affect the external appearance of that building. As such, it would be development under s55(1) of the 1990 Act, and would require planning permission, which has not been obtained.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

V Bond
INSPECTOR