



Appeal Decision

Site visit made on 26 February 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Appeal Ref: APP/N4720/X/19/3235993

10 Arthursdale Close, Scholes, Leeds LS15 4AP

- 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 Ms B Clarkson against the decision of Leeds City Council.
 - The application Ref 19/03636/CLP, dated 11/06/2019, was refused by notice dated 13/08/2019.
 - 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 'proposal to render the house with a parex monochrome through colour render system in a scraped textured finish in a white colour to an approved sample panel'.
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Decision

1. The appeal is dismissed.

Main issue

2. The issue is whether the Council's refusal of the application was well founded.

Procedural matters

3. The proposed LDC claims that to render the exterior of the house would be lawful. Planning permission was granted on 31/05/2019 to increase the ridge height of the property with extension to the side and detached garage to the rear under reference 19/00600/FU. The appellant has indicated on the appeal form that work has started before the application was made to the local planning authority. The appellant's submission indicates that the walls will be rendered to cover damage caused by demolition and photographs illustrate a material commencement of the permission. In addition, plan reference elevations as proposed dated 14 November 2018 Rev D which accompanied the LDC shows the finish of the walls of the extended development as render. The Council has dealt with the LDC on the basis that the proposed works include the rendering of extensions the subject of the planning permission granted and indicate that the permission has been implemented.
4. An application for an LDC made under s.192(1)(b) of the Town and Country Planning Act 1990 (TCPA) only determines whether the development described would have been lawful on the date that it was made. It does not confirm whether any development carried out after that date or which might differ from the original description would benefit from permitted development rights.

Reasons

5. From the evidence of both parties the LDC relates to rendering the external walls of the house as extended. The permission authorising the extension is therefore implemented and regulates the development carried out by virtue of the planning conditions imposed on that permission.
6. Article 3(4) of The Town and Country Planning (General Permitted Development) (England) Order 2015 states that 'Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order'.
7. The permission reference 19/00600/FU was granted subject to conditions. Condition 3 stated that; 'The external walling (except the cladding and garage as shown on the submitted plans), and roofing materials shall match those existing'. The approved plans condition 2 specified drawing elevations as proposed 14 November 2018 Rev C. Annotated on this drawing is a note stating; 'walls brickwork to match existing'. The proposed LDC application to render the house would fail to comply with the conditions and permission which regulates the authorised development and would fall outside of permitted development rights by virtue of Article 3(4), as set out in paragraph 6 above.
8. The Council's refusal of the application on the balance of probability was well founded. As a result, there is no need to assess further whether the proposed render was similar to the existing render on parts of the original walls of the property in relation to permitted development rights given the conclusion that the authorised permission regulates the development and Article 3(4) prohibits permitted development which is contrary to planning conditions imposed on the permission. In addition, the LDC application is concerned with whether the operation proposed to be carried out would be lawful in relation to the property. The point that render would improve the appearance of the house and the fact that other houses in the area have rendered external walls are planning merit considerations and are not relevant to the main determining issue of an LDC.

Iwan Lloyd

INSPECTOR