
Appeal Decision

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2020

Appeal Ref: APP/A5270/X/19/3230497
119 Mandeville Road, Northolt UB5 4LY

- 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 Gad Neama against the decision of the Council of the London Borough of Ealing.
 - The application Ref 190435CPE, dated 31 January 2019, was refused by notice dated 15 April 2019.
 - 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 glass conservatory to the rear.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. As the appeal relates to the lawfulness of an existing conservatory and the matter in dispute largely relates to its planning history, views were sought from the parties as to whether it would be necessary for me to visit the site. No objections to this course of action were received and I do not consider that injustice to the parties would arise from determining the appeal on the basis of the written evidence and plans before me.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) is not well-founded.

Reasons

4. There is no dispute between the parties that the conservatory was constructed in approximately 2001 and that an enforcement notice was issued in 2002, which sought its removal (described in the enforcement notice dated 28 March 2002 as a 'single storey rear extension'). An appeal was lodged against the enforcement notice and the notice was subsequently upheld.
5. The appellant contends that the Council sought to enforce the enforcement notice via the courts in 2007 and subsequently lost their case. However, there is no further evidence before me from either party regarding this matter.

6. The appellant suggests that two planning permissions were granted in 2003¹ for the retention of part of the conservatory. The Council only refer to one planning permission (P/2003/0374) having been granted. I note that the Officer's Report includes two different reference numbers, suggesting two different permissions. However, the descriptions of the proposed developments and the dates of the decisions are identical. Furthermore, given that the descriptions refer to the retention of the conservatory at 'a point 3.8 metres from boundary with attached house No. 117 Mandeville Road', I do not accept that if there were indeed two separate permissions that they would encompass the entirety of the conservatory, which is approximately 9.2m in length. This is because at a length of 9.2m the conservatory cannot possibly be 3.8m from the boundary with No. 117. As a consequence, I do not consider that the existing conservatory benefits from this/these planning permission/s.
7. As the single storey rear extension (the conservatory) referred to in the enforcement notice remains in situ and there is no evidence to suggest that on the balance of probabilities it was removed in accordance with the requirement of the notice, I consider that the notice has not been complied with. Furthermore, as the enforcement notice has not been withdrawn by the Council, despite the significant passage of time since it was issued, it remains in force.
8. I acknowledge the appellant's argument regarding the passage of time, particularly in respect of the 4 and 10 year rules. However, these relate to the time limit on taking enforcement action against unauthorised development, e.g. issuing an enforcement notice. There are no such limits for the Council to enforce the requirements of an enforcement notice once it is issued.
9. I also note the arguments raised by the appellant regarding whether the requirement to remove the conservatory by the Council would now be reasonable and the effect on the human rights of the occupants of the property. However, these matters relate to the enforcement of the notice itself, rather than whether the notice remains in force. Section 191(2)(b) of the Town and Country Planning Act 1990 states that 'For the purposes of this Act uses and operations are lawful at any time if—they do not constitute a contravention of any of the requirements of any enforcement notice then in force'. As the enforcement notice remains in force, as it was upheld on appeal and there is no evidence of the Council having since withdrawn it, and the conservatory represents operational development that is in contravention of its requirements, the conservatory therefore fails to satisfy section 191(2)(b). Consequently, it cannot be regarded as lawful.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful 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.

Alexander Walker

¹ LPA refs 34283/3 and P/2003/0374

INSPECTOR