



Appeal Decision

by Chris Hoults BA(Hons) BPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28TH SEPTEMBER 2020

Appeal Ref: APP/H5960/X/20/3246819

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- 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 I-Improve Limited against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2019/2799, dated 26 June 2019, was refused by notice dated 21 November 2019.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
 - The development for which a LDC is sought is the implementation of planning permission ref. 2016/1302 for the erection of a roof extension above a three-storey back addition (with French doors and safety railings).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In an appeal of this kind the planning merits of the development are not for me to consider. My decision will turn on the legislative provisions, relevant planning case law and the submitted evidence. Given therefore that it was not necessary in order to reach a decision to see the appeal site and its surroundings, a site visit was not carried out.
3. There is no copy of the Council's decision notice on my file. The Council does not appear to have included it in its appeal documents. It is referred to as forming Appendix E of the appellants' appeal statement but what is copied there is the decision notice in respect of the original 2016 planning permission. The relevant details in the heading, above, are therefore taken from the body of the appellants' appeal statement.
4. In the description of the building works or activity for which a LDC is sought, the application form refers to the original planning permission, ref. 2016/1302 ("the 2016 permission") and explains that the LDC seeks to confirm that construction work has been implemented on site. This relates to condition 1 of the permission which requires that the development be begun within 3 years from the date of the permission. The reason for the condition is in order to comply with s91 of the 1990 Act. S91 sets out a general condition that requires that every planning permission granted or deemed to be granted must be begun not later than the expiry of the "applicable period" (in England, three

years). If the condition is not met, the planning permission will lapse. The permission was dated 30 June 2016.

5. The appellants contend that building works to begin the development took place prior to 30 June 2019, the expiry date of the 2016 permission. The Council's refusal is on the basis that there is insufficient evidence of that. What is at stake therefore is the lawfulness of the development subject of the 2016 permission. I have therefore modified the description of the development for which the LDC is sought to frame it in the terms of that planning permission.

Main Issue

6. Having regard to the provisions of s195 of the 1990 Act, the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

7. The application relates to a four-storey mid-terrace property with a three-storey back addition, divided into self-contained flats. The 2016 permission was for a roof extension above the back addition. The Council notes that the LDC application was acknowledged as received on 26 June 2016, which is the date of the application. Given the short period of time before the permission lapsed, it was not possible to visit the site to confirm commencement before the date at which it would lapse. The Council lists the documents which accompanied the application – the approved planning drawings, the decision notice and report for the 2016 permission and a building control notice email. Photographs showing the extent of works to begin the development (see below) do not appear to have been submitted at that time.
8. The Council goes on to explain, regarding the building control notice, that it indicates an intention to start works and the email confirms that the notice was accepted on 7 June 2019. While it is a requisite of a building notice that works must not commence within 48 hours of it being served, there is no requirement for works to begin within a certain period. The service and confirmation of the notice cannot of itself therefore amount to conclusive evidence that the works would have started prior to 30 June 2019. Building control functions appeared to be being carried out by a third party company who subsequently, when asked by the Council for further information as to the date the works might have started, said that it was "*not able to give out information on the project*".
9. The photographs of the works carried out accompany the appellants' appeal statement. The Council accepts, and I am in no position to disagree, that the substance of the works shown would constitute commencement of the development for purposes of s56 of the 1990 Act. Importantly, however, they are not dated. That the photographs did not accompany the application but did accompany the appeal raises doubts in my mind as to their reliability in providing clear and unambiguous evidence of the timing of the works, and whether they occurred before 30 June 2019, for reasons upon which I expand below. The Council refers to other evidence (signed and dated contracts for the construction works, sworn witness statements from third parties) that might also have been submitted to pinpoint matters of timing.
10. For their part, the appellants argue that development started promptly after the building notice was served and confirmed and point out that serving the notice was indication of an intention to start works shortly thereafter. While

they explain that the works could constitute a material operation within the scope of s56(2) and (4) of the 1990 Act and refer to relevant case law, this is not in any event contested by the Council. The relevant construction work (fixing of timber floor joists to the existing floor structure) is shown in the photographs and they say that this was set out and carried out by a contractor in June 2019. However, no further details are provided.

11. I have assessed the parties' evidence bearing in mind the provisions of the Government's Planning Practice Guidance (PPG) in relation to evidence in support of LDC applications. It explains the evidential burden that needs to be discharged by an applicant/appellant. It says that, if a local planning authority has no evidence itself or from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability¹.
12. My decision turns not on the substance of the relevant works but on their probable timing. The appellants say that they sought to regularise them via a LDC application with particular reference to timing, given that commencement was close to the date that the 2016 permission expired. As an element of the supporting evidence marshalled to accompany the application, the photographs are key. I would reasonably expect that, if the works had been carried out prior to 26 June 2019, they would have been included among the application documents. I accept the proposition, however unlikely, that the application might have preceded the works but that they could still have been carried out between 26 and 30 June 2019. In that case, all the more reason to ensure that the photographs were dated. It is not a difficult undertaking.
13. Neither has occurred and, moreover, there is no other supporting information that provides reliable evidence as to the timing of the works. This could relate to the contract for the works, the identity of the contractor and any other first-hand evidence (other than the photographs) relating to their carrying out. The best evidence relating to timing is the building control notice but I have already indicated that that evidence of itself would not be sufficient. The Council has no contradictory evidence regarding when the works took place, as it acknowledges. Notwithstanding that, and for the reasons I have given, the appellants' evidence falls short of passing the test of precision and a lack of ambiguity to justify the grant of a LDC on the balance of probability.

Conclusion

14. Accordingly, I conclude that the Council's refusal to grant a LDC in respect of the implementation of planning permission ref. 2016/1302 for the erection of a roof extension above a three-storey back addition (with French doors and safety railings) was well-founded and that the appeal must fail. I shall exercise accordingly the powers transferred to me in s195(3) of the 1990 Act.

C M Hoult

INSPECTOR

¹ PPG paragraph 006 Reference ID: 17c-006-20140306