
Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 12 October 2020

Appeal Ref: APP/E5330/X/19/3241140

59-61 Humber Road, London SE3 7LR

- 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 the failure to reach a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Ms Glencora Senior, Log-on Technology Ltd against the Council of the Royal Borough of Greenwich.
- The application Ref19/1602/CE was dated 16 May 2019.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The Certificate of Lawful use was sought to '*establish that planning permission, dated 29/07/2015 (Reference 18/0436/F), has been commenced*'.

An application for costs has been made by Ms Glencora Senior, Log-on Technology Ltd against the Council of the Royal Borough of Greenwich.

This is the subject of a different decision.

Decision

1. The appeal is allowed and a Lawful Development Certificate is attached.

Matters of clarification

2. Further to the case officer's letters to the parties I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the initial submissions, supplemented by additional information being supplied. The appellant and the Council have agreed to the appeal proceeding without a site visit and I am satisfied that, in dealing with it in this manner, no injustice is caused.

3. The LPA initially failed to reach a decision on the LDC application. However, based on legal advice, the Council has indicated, in its statement, that it will not be defending this appeal. Nevertheless, I must still consider the LDC application on its face and whether or not the planning permission, dated 29/07/2015 (Reference 18/0436/F), had been commenced within the relevant 3 year period and that the development was lawful on the date that the LDC application was made.

Background information

4. The appeal properties (Nos 59 and 61) are part of a two-storey, detached building comprising 6 flats. The building is located on the north side of Humber Road and lies within the Westcombe Park Conservation Area. The LDC application (19/1602/CE) relates to the commencement of the works to the roof voids of Nos 59 and 61. These works were granted permission (15/0436/F) on 29/07/15.

5. The Council indicates that the evidence provided on behalf of the appellant was contradicted by representations (photographs and e-mails) from local residents. The Council, therefore sought legal advice from Barristers chambers. However, before the opinion was received, the appellant submitted the appeal against the non-determination of the LDC application. Following receipt of the legal advice the Council is now of the view that on the balance of probabilities the development lawfully commenced prior to the expiry date of the original consent.

Reasons

6. An appeal relating to a LDC refusal (or in this case non-determination) is normally confined to the narrow remit of reviewing the LPA's reason for refusal. However, as indicated above, the LPA has not defended this appeal.

7. The planning merits of the case do not fall to be considered. National Planning Practice Guidance (PPG) indicates that an applicant for an LDC is responsible for providing sufficient information to support an application. I have considered all of the information provided and in particular the legal submissions which go to the heart of whether or not the planning permission had lawfully commenced by the time of the LDC application.

The gist of the case for the appellant

8. The appeal statement, submitted on behalf of the appellant, refers to the development granted permission and the legal provisions relating to the commencement. In particular it refers to details in case law (*Malvern Hills DC v Secretary of State for the Environment [1982] JPL 439*; *United Refineries Ltd v Essex CC [1978 JPL110 and Thayer v Secretary of State for the Environment [1992] JPL 264*) which, amongst other things, indicate that works to show commencement must be more than de minimis but that beyond that need only be related to the approved development and that the amount of work carried out is irrelevant.

9. Factual evidence relating to the commencement of works is then set out within the statement. These works are stated to be *the erection of scaffolding up to roof level; Dismantling part of the roof to gain access to the building; the insertion of padstone plates P1 and P2 and the demolishing part of the wall between the voids over Nos 63-65 and 59-61*. It is contended that these works are *comprised in the development*. Submitted drawings; references to the Pad Stones and to the relevant Building Regulations are referred to and it is stressed that the development could not be carried out without the insertion of the Pad Stones.

10. Evidence is supplied to indicate when workmen carried out works on 25, 26 and 27 July 2018. Photographic evidence is also supplied, including one showing a newspaper on the site dated 25 July 2018. In conclusion it is argued that the works carried out were more than merely preparatory; that they were more than de minimis; that the works were comprised in the development and that the works were begun before 29 July 2018.

The gist of the case for the Council (in not defending the appeal)

11. In its statement the Council refers to the appeal site; the appeal proposal; relevant planning history; a timeline of engagement and reasons for not defending the appeal. On the latest point it is contended that there are two main issues. The first relating to whether or not the erection of the scaffolding constituted commencement of the works and the second relating to the evidence relating to the padstone works.

12. On the first issue the Council does not accept that the scaffolding could, in itself, constitute commencement of development. It is stressed that these works comprised a preparatory act which was carried out in order to facilitate the commencement of the works as approved. It is contended that this was analogous to materials being delivered to the site and that the scaffolding was not part of the development permitted.

13. On the second issue the Council accepts that the appellant has provided compelling evidence that the padstones and demolition works took place prior to the expiry of the permission. The Council refers to the invoice for padstones; the photographs taken of the padstones and the metadata of the photographs as well as the dated newspaper. It is considered that the evidence relating to when workmen were on site reinforces the appellant's assertion that the works had lawfully commenced prior to the expiry date.

My assessment

14. Having considered all of the submissions including the statements, drawings, photographs and, particularly, the legal opinion, I agree with the Council and the appellant. I consider that the appellant has demonstrated, on the balance of probabilities, that planning permission, reference 18/0436/F and dated 29/07/2015, commenced in accordance with the condition required by section 91 of the Act. That is, the development commenced before the end of the expiry period of 29/7/18 and was, therefore lawful at the time of the LDC application.

15. With regard to the appellant's reasons, I do not consider that the '*erection of scaffolding up to roof level*' constituted commencement of the works. As indicated above the Council considered this to be preparatory works and analogous to delivery of materials. I agree with their conclusion. It is also not clear to me which parts of the roof were dismantled '*to gain access to the building*'.

16. However, I consider that the evidence relating to '*the insertion of padstone plates P1 and P2*' and the '*demolishing*' of part of the wall between the voids over Nos 63-65 and 59-61' is convincing. I agree that these works are such that they were '*comprised in the development*'. The submitted drawings, all of the references to the padstones (including structural calculations), references to the Building Regulations and the other submitted documentation all reinforce my view that the works as approved did commence before the expiry date.

17. I have noted all of the submissions by the objectors and to some extent can understand their conclusion that, following the erection of the scaffolding, the main works had not been commenced. There must have been nothing obvious from the outside. Without an internal inspection the objectors could not have shown that the internal structural works (insertion of padstones to take the steelwork) within the roof space were being carried out. There is no evidence before me, therefore, to contradict that submitted on behalf of the appellant.

18. I also agree with the Council and the legal opinion that it is highly unlikely that the appellant company would, or could have, fabricated the evidence in such a way so as to result in '*extensive fraud*' or '*forgery*' to make their case. Again there is nothing before me to suggest that this is the case.

19. In conclusion, therefore, I allow the appeal and a LDC is attached below.

Other Matters

20. In reaching my decision I have taken into account all other matters raised by the main parties and other interested persons. These include the full planning

history of the property; the reported timelines (relating to the LDC application) as set out in the appellant's and the Council's statements; the rebuttal to the Council's statement; all of the objections as submitted; all of the photographic evidence and submitted drawings and all of the matters raised in relation to the appellant's application for costs against the Council.

21. However, none of these alters my conclusion that, at the time of the LDC application, the development granted planning permission (18/0436/F and dated 29/07/2015) had commenced in accordance with the condition required by section 91 of the Act and was, therefore lawful.

Formal Decision

22. The appeal is allowed, and a Lawful Development Certificate is issued.

Anthony J Wharton

Inspector



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 16 May 2019 the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken in respect of the development.

Signed

Anthony J Wharton
Inspector

Date: 12 October 2020
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First Schedule

Planning permission, dated 29/07/2015 (Reference 18/0436/F), had been commenced'.

Second Schedule

59-61 Humber Road, London SE3 7LR

Notes:

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and relates only to the above property.

It certifies that the development described in the First Schedule, at the property specified in the Second Schedule, was lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the development described in the First Schedule; to the property specified in the Second Schedule and to the plans submitted with the LDC application 462/08 and 462/B.

Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.