



Appeal Decisions

Hearing held on 20 October 2020

Unaccompanied site visit made on 28 June 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27TH October 2020

Appeal A Ref: APP/C1950/X/19/3227923

112 Hollybush Lane, Welwyn Garden City, Herts AL7 4JW

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development.
 - The appeal is made by Mr Marc Tims against Welwyn Hatfield Borough Council.
 - The application (Ref. 6/2019/0913/LAWE) is dated 12 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 described as: Loft conversion completed June 2013
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Appeal B Ref: APP/C1950/X/19/3230066

112 Hollybush Lane, Welwyn Garden City, Herts AL7 4JW

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development.
 - The appeal is made by Mr Marc Tims against Welwyn Hatfield Borough Council.
 - The application (Ref. 6/2019/1061/LAWP) is dated 30 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: Proposed single storey rear extension for disabled applicant sleeping and washing arrangements.
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Appeal A Decision

1. The appeal is dismissed.

Appeal B Decision

2. The appeal is dismissed.

Applications for Costs

3. An application for costs was made by Mr Marc Tims against Welwyn Hatfield Borough Council. An application for costs was also made by Welwyn Borough Council against Mr Marc Tims. These applications are the subjects of separate decisions.

Preliminary Matters

4. For Appeal A, whilst described as a loft conversion on the application form it is clear from all the information provided that the development includes a rear dormer extension and I have determined Appeal A on this basis.
5. The appeals concern a case decided purely on the basis of technical and/or legal interpretation of the facts. It may therefore be decided without a site visit. Nevertheless, as part of my preparation I saw the site, unaccompanied, from the road and from the access to a cemetery at the side and rear. So I did not visit the site again as part of the Hearing and no objection was raised to this approach by the parties at the Hearing.
6. A decision notice was not issued for either application. Instead, the Council issued a letter for each application indicating that it was declining to determine the application, purporting to draw on powers under section 70C of the Town and Country Planning Act 1990 (the 1990 Act).
7. The Council has since taken the view that section 70C does not apply to applications for certificates of lawful development. Therefore, the Council has not given notice to the appellant of their decision on the applications within the prescribed period and so both appeals are made under section 195(1)(b) of the 1990 Act noted above.

Main Issue

8. It is clear from the evidence that had the Council made decisions on the applications both decisions would have been to refuse. Therefore, the main issue for each appeal is, if the Council had refused the application, whether the refusal would have been well-founded or not.

Reasons

9. Planning Practice Guidance is clear that the applicant (or in this case the appellant) is responsible for providing sufficient information to support a lawful development certificate (LDC) application¹.
10. The property is subject to an enforcement notice which was issued on 11 April 2014. The breach of planning control alleged in the notice is:

Without planning permission, the erection of a two storey side extension and rear dormer window.

11. The enforcement notice was subject to an appeal which was decided on 27 November 2014². The Inspector for that appeal varied requirement (b) of the notice before upholding the notice. As varied, the enforcement notice required within 12 months of the appeal decision the following:

(a) Demolish and completely remove the unauthorised extension including all foundations and services, outlined in blue on the plan attached to the notice and return the land back to its previous condition, or;

¹ Lawful development certificates, paragraph: 006 Reference ID: 17c-006-20140306

² Ref: APP/C1950/C/14/2218542, 43

(b) Modify the unauthorised development to comply with drawing number 701/2A (dated 1 February 2011) which was approved under application number N6/2010/3066/FP.

(c) Clear the land of any resultant materials, debris and structures associated with the creation and demolition of the unauthorised extension.

12. The evidence indicates that the appellant was convicted on 16 November 2018 for failing to comply with the above enforcement notice.

Appeal A 'The Dormer Appeal'

13. At the Hearing Mr Tims confirmed that the LDC application for the dormer is substantially similar to development to which the enforcement notice relates.
14. Section 191(2)(b) of the 1990 Act 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.
15. The appellant states the dormer on the property was substantially completed in 2013. It is clear the dormer does not comply with requirement (a) of the aforementioned enforcement notice which, in effect, required demolition of the dormer as part and parcel of the demolition of the two storey side extension.
16. It is also clear the dormer does not comply with requirement (b) of the aforementioned enforcement notice (as varied by the previous Inspector), as the single drawing that requirement (b) refers to does not depict a dormer on the roof of the property.
17. In other words, the dormer cannot survive either requirement (a) or requirement (b) of the notice, whichever of the two is pursued to achieve compliance with the notice. Yet the dormer remains on the property. In either scenario, the dormer constitutes a contravention of a requirement of the enforcement notice for the purposes of section 191(2)(b) of the 1990 Act, and, there is no evidence that the enforcement notice was not 'in force' on the date of the LDC application for the dormer.
18. The appellant has been at pains to argue that the dormer is permitted development. But for the purposes of this application for an LDC this is not relevant because of the provisions of section 191(2)(b) of the 1990 Act, noted above. In other words, the enforcement notice overrides permitted development rights for the dormer which is before me.
19. The appellant has implied that the dormer is immune from enforcement action due to the provisions of section 171B(1) of the 1990 Act, as it has been in place since 2013 ie more than 4 years. But it is irrelevant how long the dormer has been in place due to the provisions of section 191(2)(b) of the 1990 Act, ie because it is subject to an active enforcement notice.
20. In addition, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 1995 (the 1995 Order), which was the relevant statutory instrument in place at the time the dormer was constructed, includes permitted development rights for extensions to a dwellinghouse consisting of an addition or alteration to its roof. These rights are, in effect, an automatic grant of planning permission, subject to conditions and limitations set out in the 1995 Order.

21. Article 3(5)(a) of the 1995 Order states the permission granted by Schedule 2 does not apply if, in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful.
22. The dormer sits on top of the two storey side extension which is the subject of the aforementioned enforcement notice. The enforcement notice required either demolition of the two storey side extension (as per requirement (a)), or, its modification (as per requirement (b)) to reflect drawing 701/2A.
23. As the two storey side extension still exists requirement (a) has not been complied with. This does not matter if requirement (b) had been complied with. But as the dormer still exists, requirement (b) has not been complied with either. Therefore, because the enforcement notice has not been complied with, the building operations involved in the construction of the two storey side extension were unlawful and remain so. So the two storey side extension cannot be extended using permitted development rights until the notice is complied with.
24. I have heard the appellant's view that the two storey side extension is not unlawful and my attention has been drawn to a letter dated 2 March 2016 from the Council to Mr Tims, submitted by Mr Tims at the Hearing. It is the appellant's view that the letter 'makes' the two storey side extension 'not unlawful'. But this position cannot be reconciled with the existence of the aforementioned enforcement notice which renders the two storey side extension unlawful. In any event, the letter is clear that the dormer remains in place and that removal of the dormer is required to comply with the enforcement notice.
25. The appellant has been at pains to argue that he has complied with the enforcement notice. But his conviction for failing to comply with the notice is evidence to the contrary and is supported by my own observations of the site where I have seen that the dormer still remains in place.

Appeal B 'The Extension Appeal'

26. The permitted development rights for extensions to a dwellinghouse in place at the time of the application for the development which is the subject of Appeal B are set out in Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order).
27. Consistent with the 1995 version, Article 3(5)(a) of the 2015 Order states the permission granted by Schedule 2 does not apply if, in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful.
28. Having established, above, that the building operations involved in the construction of the two storey side extension were unlawful, the two storey side extension cannot be extended using permitted development rights until the notice is complied with.
29. Therefore, the proposed single storey rear extension cannot be constructed under permitted development rights.
30. Moreover, the Council have pointed out that the proposed extension does not comply with paragraphs A.1(h), or A.1(i) or A.1(j) of Schedule 2, Part 1,

Class A of the 2015 Order as it forms part of the two storey side extension. The appellant's view is that the two extensions are completely different things.

31. But paragraph A.1(ja) of the 2015 Order states that development is not permitted by Class A if any total enlargement (being the enlarged part **together with any existing enlargement** of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j). (My emphasis).
32. In other words, the proposed single storey rear extension must be considered together with the existing two storey side extension and not separate from it.
33. For this reason, from the information provided, it is clear that the proposed single storey rear extension does not comply with Schedule 2, Part 1, Class A of the 2015 Order paragraph A.1(h) because of its height and depth, or paragraph A.1(i) because of its proximity to the boundary and its height, or paragraph A.1(j) because of its height and width.

Other Matters

34. Planning Practice Guidance³ is clear that planning merits are not relevant at any stage in a lawful development certificate application or the appeal process for such an application. Therefore I cannot take them into account. Planning merits include matters such as planning policies, the character and appearance of the development, the effect of the development on the living conditions of neighbours, precedent and occupants' accommodation needs (including those of disabled persons or relating to medical issues).
35. Human rights and equality considerations do not come into play when making a determination as to whether development is or would be lawful as there is no discretion and it is a matter of law only.
36. The appellant has questioned the legality of the issue of the aforementioned enforcement notice which was varied and upheld on appeal. There is no evidence the appeal decision relating to that enforcement notice has been successfully challenged in the High Court and remitted to the Secretary of State for reconsideration. So it is not open to me to reconsider that appeal decision as part of the appeals which are before me.
37. The appellant's prosecution, referred to in the evidence, for non-compliance with the enforcement notice, is not a matter for me to consider either in the context of these appeals under section 195 of the 1990 Act. Nor are the appellant's complaints about the Council.
38. My attention has been drawn to The Planning Inspectorate's procedural guide⁴ which states that if we consider that an enforcement notice is in force which will prevent the grant of an LDC⁵ so that the appeal will be dismissed we will write to the appellant and explain this. The appellant states no such letter has been forthcoming. Be that as it may, it does not change my overall conclusions in this case and does not mean that either development is lawful.
39. The appellant has asked that the appeals are decided by the Secretary of State. But there is no evidence any of the relevant criteria for this are met.

³ Lawful development certificates, paragraph: 009 Reference ID: 17c-009-20140306

⁴ Procedural Guide – Certificate of lawful use or development appeals – England, 23 March 2016 (since updated)

⁵ This only applies to section 191 appeals as for those appeals the development has already taken place.

40. The appellant has said they are unable to sell the house and that they seek a way forward. But it is not within my gift to say how enforcement matters on the site should be resolved and I cannot fetter the Council's discretion in this regard. It is entirely a matter for the appellant to resolve with the Council, having regard to any enforcement notice that remains active on the property.
41. Finally, the appellant has complained that the Council has refused to check compliance with the enforcement notice by taking measurements of the property. But there is nothing to stop the appellant measuring the property and there is little point in anyone doing so when the notice has so obviously not been complied with given that the dormer still exists.

Appeal A Conclusion

42. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of a loft conversion 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.

Appeal B Conclusion

43. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of a proposed single storey rear extension 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.

L Perkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Marc Tims	Appellant and owner
Mrs Grainne Tims	Owner

FOR THE LOCAL PLANNING AUTHORITY:

Matt Lewin	Counsel, Cornerstone Barristers
Jonathan Murray	Principal Enforcement Officer
Mateusz Plaza	Legal Trainee
Rachael Simpson	Senior Litigation Lawyer

DOCUMENT

Letter dated 2 March 2016 from Colin Haigh, Head of Planning, Welwyn Hatfield Borough Council to Mr Tims