The Planning Inspectorate

Appeal Decision

by Thomas Shields MA DipURP MRTPI

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

Decision date: 30 October 2020

Appeal Ref: APP/T5720/X/20/3246312
15 Marryat Road, Wimbledon, London, SW19 5BB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Muddassar Malik against the decision of the Council of the London Borough of Merton.
- The application Ref:19/P3881, dated 1 November 2019, was refused by notice dated 20 December 2019.
- The application was made under section 192(1)(b) of the Act.
- The development for which a LDC is sought is installation of external air handling unit housed within a 2m high x 1.34m deep x 1.49m wide acoustic enclosure, required for a purpose incidental to the enjoyment of a dwelling house.

Decision

1. The appeal is dismissed.

Preliminary matters

2. In an LDC appeal the onus of proof is on the appellant to demonstrate, on the balance of probabilities, that the development would be lawful at the date of the application. Planning policies and the planning merits of the development are not relevant matters.

3. The Council changed the description of development to an abbreviated version. However, the totality of the proposed development, as set out in the submitted plans and details, is more fully and accurately described in the appellant's original description provided on the application form, and as I have set out in the banner heading above. I have determined the appeal on that basis. I refer to the proposed development hereafter in its totality unless referring to specific parts of it, namely the external air handling unit (AHU) and the acoustic enclosure (AE).

Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded.

5. This turns on whether the proposed development would benefit from the planning permission granted by Article 3(1) and Class E, Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order"), generally referred to as "permitted development".

Reasons

6. There is no dispute that the development would comply with the locational and size limitations within Class E.

7. As defined in the Order a "building" does not include any plant or machinery. And, in Schedule 2 (except in Class F of Part 2, and Class C of Part 11), "building" does not include "any gate, fence, wall or other means of enclosure". However, Class E.(a) expressly permits (subject to the Class E size and other limitations) any enclosure where it is required for a purpose incidental to the enjoyment of the dwellinghouse.

8. The Council regard the proposed development to be a single unit of plant equipment and thus outside of Class E. The appellant's case relies heavily on a submitted legal opinion[1] in which it is argued that the development comprises the AE element of the development (which contains the AHU) and as such should be regarded as an 'enclosure' within Class E. I reject the appellant's arguments for the following reasons.

9. The proposed development, upon which my decision must be made, is described in the application form as: "Installation of external air handling unit housed within a 2m high x 1.34m deep x 1.49m wide acoustic enclosure, required for a purpose incidental to the enjoyment of a dwelling house". In addition, the submitted accompanying plan of the proposal is annotated "AHU in acoustic housing". It is clear to me from these factors that the development subject of the application, and now this appeal, is a single development comprising both the AHU element and the AE element together.

10. That both elements comprise a single development in this case is further emphasised by the submitted Louvremax product specification details. These detail the specification data for both the AHU **and** the AE in combination; including the dimensions of the AHU and its predicted air flow/pressure, together with the dimensions of the AE, and resulting predicted noise levels from the proposed development, as a whole, when in operation. Consequently, as a matter of fact and degree, I find that the primary function and purpose of the AE is not, as the appellant argues, an enclosure within Class E (which contains separate plant equipment) but rather it is an integral and functioning noise-supressing component of the air conditioning plant equipment as a whole.

11. I acknowledge that many types of enclosing structures can be envisaged for some of the incidental purposes referred to by the appellant at Class E.4 (keeping of poultry, bees, etc). However in such cases the purpose of the enclosure would be required solely to enclose those incidental purposes. That is different to the circumstances in this case where the outer cabinet of the development is not for such a purpose. It is, as previously explained, an integral and working component of the development as a whole, being plant equipment. Consequently, the proposed development would not be permitted development within Class E of the Order.

12. The appellant refers to other matters - developments at other locations, to pre-application advice, and to errors in the Council's report in consideration of the application. However, I have determined the appeal on the basis of the

[1] Legal Advice, 28 January 2020, Francis Taylor Building

development as proposed and as I have set out above. The other matters referred to do not lead me to reach a different conclusion.

Conclusion

13. For all the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed installation of external air handling unit housed within a 2m high x 1.34m deep x 1.49m wide acoustic enclosure, required for a purpose incidental to the enjoyment of a dwelling house 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.

Thomas Shields

INSPECTOR