



Appeal Decision

Site visit made on 17 November 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2020

Appeal Ref: APP/A5270/D/20/3250684

9 Hall Drive, London W7 1AB

- 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 Miss Karolina Pawelec against the decision of the Council of the London Borough of Ealing.
 - The application Ref 193875CPE, dated 5 September 2019, was refused by notice dated 8 April 2020.
 - 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: Rear canopy (wooden post with plastic roofing); and rear patio.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development in the heading above from the Council's decision notice as this accurately describes the appeal development more succinctly than the application form.
3. No reasons for refusing the application are given by the Council on its decision notice, as the "attached schedule" referred to on the first page is not found anywhere on the document. Nevertheless, it is clear from the Council's report that the Council considers the development unlawful because insufficient and inadequate evidence has been submitted to establish, on the balance of probability, that the development has been in existence for a period of 4 consecutive years (unaltered) prior to this application.

Main Issue

4. The main issue in this appeal is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

5. The application before me is a lawful development certificate. It is not a planning application. So as is stated in the Planning Practice Guidance¹ I must consider whether, on the facts of the case and relevant planning law, the

¹ Lawful development certificates - Paragraph: 009 Reference ID: 17c-009-20140306

specific matter is lawful and planning merits are not relevant at any stage in this particular application or the appeal process.

6. Planning Practice Guidance² is clear that the applicant (or in this case the appellant) is responsible for providing sufficient information to support a lawful development certificate application.
7. Section 191(2) of the 1990 Act referred to above, states that for the purposes of this Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
8. Section 191 (4) of the 1990 Act states that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
9. The appeal development consists of a transparent plastic canopy supported by a timber structure over a concrete base. It is of a substantial size and it appears to have been constructed on site as a permanent structure. The appellant has described it as "portable" and "removable". But there is no evidence this is the case. It is physically attached to the rear elevation of the building by timber brackets and its timber supporting columns are seated in metal brackets set into a concrete base across the rear garden. There is no evidence it has ever moved or is capable of being readily moved.
10. Taking the above points into account I consider the structure is a building operation for the purposes of section 55 of the aforementioned 1990 Act. So it is development and it therefore requires planning permission. The appellant seems to suggest it is not an "extension". But this makes no difference to my assessment above.
11. No evidence has been provided which demonstrates that planning permission exists for the structure, either pursuant to The Town and Country Planning (General Permitted Development) (England) Order 2015 or a permission expressly granted by the Council or by other means.
12. The application form clearly states the building works were substantially completed on 29 June 2019. So on this basis the time for enforcement action cannot possibly have expired for the purposes of section 171B of the 1990 Act.
13. My attention has been drawn to the Human Rights Act 1998 and the European Convention on Human Rights. But human rights considerations do not come into play when making a determination as to whether development is lawful since there is no discretion and it is a matter of law only.

² Lawful development certificates - Paragraph: 006 Reference ID: 17c-006-20140306

14. The appellant has described the service provided by the Council as unprofessional. But this is not a matter for me to consider in an appeal under section 195 of the 1990 Act.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a rear canopy and rear patio was well-founded and that the appeal fails. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

L Perkins

INSPECTOR