



Appeal Decision

Site visit made on 1 December 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2021

Appeal Ref: APP/L5810/X/20/3251376

Flat 5, Haverfield House, 24 Kew Green, Kew TW9 3BH

- 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 Mr R Grigg against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 20/0352/ES191, dated 6 February 2020, was refused by notice dated 17 March 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 described as: Installation of a new staircase from the existing accommodation floor and modifications to the roof in preparation for further works.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operations which are considered to be lawful.

Preliminary Matter

2. A different description of development is stated on the application form, the decision notice and the appeal form. There is no evidence any change in description has been agreed between the parties so I have used the description of development stated in section 5 of the application form, ie the development for which a certificate was sought.

Main Issue

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

Reasons

4. On 17 August 2000 the Council granted planning permission for a development described on its decision notice as a 'roof extension', Ref: 00/0187/FUL. It is the appellant's position that the roof extension development began before it would have lapsed. Condition 1 of the permission required that the roof extension development must be begun not later than the expiration of five years beginning with the date of the permission. No pre-commencement conditions appear on the permission.

5. Where development consists of the carrying out of building operations, as is the case here, section 56 of the 1990 Act noted above states that development of land shall be taken to be initiated at the time when those operations are begun, and, that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.
6. Section 56(4) of the same Act states that “material operation” includes any work of construction in the course of the erection of a building. Section 336(1) states that “building” includes any structure or erection, and any part of a building, as so defined.
7. It is the appellant’s position that the above planning permission was commenced by installing a staircase and opening up the roof above for the staircase to rise through. I have seen both of these works on my site visit, albeit a covering has been installed over the opening in the roof.
8. Based on the information provided, the works carried out are building operations, they accord with the planning permission and they were carried out before the permission was due to lapse. The staircase and opening above it provide access up to where the roof extension is proposed. There is no evidence the works carried out would not be usable as part of the roof extension granted planning permission. In my judgment, these building works are material operations, ie they are more than de minimis and so they are sufficient for the development granted planning permission to have begun.
9. The appellant has provided a statutory declaration and contemporaneous correspondence which together indicate the building works began before the permission would have lapsed. The declaration appears properly drafted, witnessed and signed. Considered together with the correspondence provided, I have no reason to disagree with what is said in the declaration and I give it significant weight.
10. The Council considers the staircase is not sufficient evidence that development has been ‘implemented’ as it does not fall within the definition of development set out in section 55(2)(a)(i) of the 1990 Act. In the same vein, the Council also considers that the extent of alterations to the roof are limited and that it is questionable as to whether the roof works materially alter the external appearance of the building¹.
11. But little is needed for development to be begun under section 56, which does not state that a material operation must require planning permission in its own right. Moreover, it has been established in case law² that section 56 does not, as a matter of ordinary language, exclude the possibility that the development might in fact be begun in other circumstances, ie circumstances other than those set out in section 56.
12. The Council disputes whether the covering over the opening in the roof is temporary, as is indicated by the appellant. But whether temporary or not, it does not mean the other building works carried out were not sufficient for the development to have begun for the purposes of section 56.

¹ Pursuant to section 55(2)(a)(ii) of the 1990 Act

² *Field v FSS & Crawley BC* [2004] EWHC 147 (Admin)

13. The Council considers the opening of the roof is 'preparatory work' and refers to an appeal decision³ to support its view that preparatory work is not significant enough to substantiate implementation of the approval. But it is clear the works referred to by the appellant have led to a physical alteration of the building so I do not accept the opening was merely preparatory as has been suggested by the Council.
14. The Council has referred to an appeal decision⁴ where an Inspector concluded that as the works did not amount to development planning permission had not been implemented. But based on the information provided I am not satisfied the facts in that case are directly comparable with the facts in the case before me or that it makes any difference in light of the case law identified above.

Other Matters

15. The Council has drawn my attention to heritage matters. But these are planning merits and Planning Practice Guidance⁵ 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.

Conclusion

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of: 'Installation of a new staircase from the existing accommodation floor and modifications to the roof in preparation for further works', was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

L Perkins

INSPECTOR

³ Ref: APP/E5330/X/19/3241140 dated 12 October 2020

⁴ Ref: APP/P0119/X/19/3238191 dated 25 March 2020

⁵ Lawful development certificates, paragraph: 009 Reference ID: 17c-009-20140306

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 6 February 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The building works carried out are material operations which accord with the relevant planning permission and which were carried out before the relevant planning permission was due to lapse.

Signed

L Perkins
INSPECTOR

Date: 6 January 2021
Reference: APP/L5810/X/20/3251376

First Schedule

Installation of a new staircase from the existing accommodation floor and modifications to the roof in preparation for further works.

Second Schedule

Land at: Flat 5, Haverfield House, 24 Kew Green, Kew TW9 3BH

NOTES

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

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 6 January 2021

by **L Perkins BSc (Hons) DipTP MRTPI**

Land at: Flat 5, Haverfield House, 24 Kew Green, Kew TW9 3BH

Reference: APP/L5810/X/20/3251376

Scale: Not to scale

