



Appeal Decision

Site visit made on 30 January 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th March 2021

Appeal Ref: APP/C5690/X/20/3253917

9 South Park Crescent, London SE6 1JJ

- 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 Mrs Fatoumata Diallo against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/20/115742, dated 11 February 2020, was refused by notice dated 23 April 2020.
 - The application was made under section 192(1)(a) and (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: 'To the existing rear playroom structure, existing 4nos. timber single glazed windows to be renewed to Upvc framed double glazed windows; space between rear of main building and rear playroom structure to have timber-framed pergola covered with Upvc corrugated clear roofing sheets; and to use part of the residential property and rear playroom building for childminding business.'
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Decision

1. The appeal is dismissed. Definitely

Procedural Matters

2. The document submitted with the application entitled 'evidence to verify application' is somewhat confusing. Whilst it refers to some proposed elements, it appears to suggest that the property is already used for a child minding business. For example, it provides details of **current** parking arrangements for 'staff' and 'clients'. It also states that the **existing** number of childminders, assistants and children at the property each day is 10 but that the number proposed will reduce to 3. The appellant then goes on to describe some internal works to the dwelling and the outbuilding that will be required as part of the proposal, which include a separate w.c. in the dwelling, and the creation of a baby room and an entrance foyer in the outbuilding.
3. The information in this document is not entirely consistent with the application form, which states that the existing use of the building is a 'domestic residential dwelling' and that the childminding business is a proposed use. The Council's delegated report does not acknowledge an existing childminding use of the property and it deals with the application only on the basis of a proposed childminding use. Furthermore, it has taken reference in the document to the existing parking arrangements and methods of travel, and considered these as if they were proposed parking arrangements and methods of travel of staff and clients. It has also taken the numbers given of existing and proposed staff,

- assistants, and children (i.e. 10 and 3 respectively) to represent the proposed number of children each day (10 children) and proposed number of staff (3 staff).
4. The Council's approach to the information provided in the document makes sense and fits with the application form and the plans submitted with the application. Furthermore, in making the appeal the appellant has not suggested that the Council's interpretation of the information submitted is incorrect. Accordingly, I have determined the appeal on the basis that at the time of the application the existing use of the site was as a residential dwelling; that the childminding use is a proposed use; that the described parking arrangements and methods of travel of clients and staff are those intended for the proposed use; and that the proposed use will involve up to 10 children per day and 3 staff.
 5. On a separate matter, in the information submitted with the appeal the appellant does not appear to challenge the Council's decision in this case. Instead she states that she wishes to amend the proposal so that it 'will not amount to development'. It is on this basis that the appellant asks that the Council's decision is 'rescinded and Certificate of Lawful development granted'.
 6. Whilst the appellant's request is noted, the appeal has been determined having regard to the information before me, which includes that submitted as part of the LDC application. It is not within my remit to advise on a possible alternative proposal for which an LDC might be granted.
 7. Finally, the application form states that the proposal consists of both the carrying out of building or other operations and a change of use of the property. Whilst in the description of the proposed development the decision notice refers to the proposed works, the reason for refusal of the application refers only to the proposed change of use. Similarly, the proposed works have been mentioned in the officer's report, but have not been considered. Nevertheless, the application has been considered under 192(1)(a) and (b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 8. Notwithstanding the above, the description of the building or other operations given in the form includes the following:

'To the existing side extension (guest room), an addition of a second toilet to the existing bathroom and removal of Shower. Toilet to be connected to existing waste pipe. To the existing rear playroom structure, proposed internal timber stud walls for baby room and entrance foyer. All internal walls and ceiling to have insulated plasterboards.'
 9. Reference to a second w.c. and removal of the shower in the existing side extension is also referred to in the description of the change of use.
 10. Section 55(2)(a)(i) of the 1990 Act advises that the carrying out for the maintenance, improvement or other alteration of any building of works which affect only the interior of the building, shall not be taken for the purposes of the 1990 Act to involve the development of the land. I have no doubt that the works described above are integral to the change of use proposed. Having regard to the above provisions of the 1990 Act, I have not considered within this decision the internal works described on the form as these would not involve development. I have, however, considered the proposed operations in

the form of the replacement of windows, and the erection of a timber-framed and covered pergola. The description of these proposed operations and the description of the proposed change of use given in the header above have been taken directly from the application form. The appeal has been determined on this basis.

Main Issue

11. Section 192(2) of the Town and Country Planning Act 1990 as amended indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development referred to in the application would be lawful if begun on the date the application was made.
12. Having regard to the information before me, the main consideration in this case is whether the use described by the appellant amounts to a material change of use of the property, and whether the building or other operations described would be development for which planning permission is required.

Reasons

The Proposed Use

13. The appeal site is occupied by an end of terrace dwellinghouse with a parking area to the front and a single storey outbuilding within the rear garden.
14. The application proposes a child minding use at the property, along with the existing residential use, for 10 children, staffed by 3 childminders/assistants. This would operate from 0700 to 1900. If not arriving at the site by bicycle or public transport, both staff and clients would park their private vehicles both on the street and on the site.
15. A substantial portion of the ground floor of the dwellinghouse and the entire outbuilding within the rear garden will be occupied by the use. Furthermore, the plans submitted propose a fence that would have the effect of separating the outdoor space to serve the residential use from the outdoor space associated with the child minding use. The proposed layout shows that the areas to be used for childminding would be physically separated from the residential use, save for a doorway within the dwellinghouse and a door shown in the proposed fence. Indeed, the area of the dwelling to be used for childminding would have its own entrance from the parking area to the front of the property. Particular alterations are proposed to the parts of the property that would be occupied by the childminding use that are specifically for that proposed use. These include a w.c., a baby room and an entrance foyer. It is, therefore, unlikely that these areas of the site would be used as part of the residential use.

16. In addition to the above, the proposed use would provide childcare for up to 10 children. Whilst some of the children might well be siblings, the use could generate up to ten separate visits to the property from children being dropped off or picked up. This combined with the arrival and departure of staff would result in significant pedestrian activity to and from the property. Whilst I acknowledge that a family occupying this dwelling might well be large, they would not generate the type or amount of activity that would result from the childminding use proposed in this case.
17. Having regard to the areas of the property that would effectively be handed over to the childminding use, together with the activity that would result from the provision of childcare for up to 10 children, the proposed childminding use would, on the balance of probability, change the character of the property to the extent that it would be materially different to the existing residential use. Furthermore, this use would not on the balance of probability be ancillary to the existing residential use. The childminding use would be materially different from the residential use. The proposed use would, therefore, require the benefit of planning permission and would not be lawful.

The Proposed Building or Other Operations

18. The description of proposed operations includes the replacement of timber framed single glazed windows within the outbuilding with Upvc framed windows. The windows to be replaced are in the external elevation of the building. Section 55(2)(a)(ii) of the 1990 Act advises that the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building shall not be taken for the purposes of the 1990 Act to involve the development of the land.
19. It is for the appellant to demonstrate that the proposed change from the existing timber framed single glazed units to Upvc framed units would not, on the balance of probability, materially affect the external appearance of this building and, therefore, amount to development for the purposes of section 55 of the 1990 Act. However, I have not been provided with details of the replacement windows in order to demonstrate this. Neither has my attention been drawn to any provisions within The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order) that would permit the works.
20. Turning to the timber-framed and covered pergola, whilst I have been provided with a layout plan showing its location, I have been provided with no other details of the proposed works. In this regard, the appellant has failed to demonstrate that the covered pergola would not, on the balance of probability, amount to development for the purposes of section 55 of the 1990 Act.
21. Notwithstanding the above, I note that the covered pergola would extend over 8 metres from the rear wall of the dwellinghouse. In this regard, I note the provisions of Class A, Part 1, Article 3 of Schedule 2 of the Order that permits the enlargement of a dwellinghouse, subject to a number of provisions that are listed under A.1. of Class A. The most relevant of these are as follows:
 - (f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and—

- (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or
 - (ii) exceed 4 metres in height;
 - (g) for a dwellinghouse not on article 2(3) land¹ nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and—
 - (i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or
 - (ii) exceed 4 metres in height.
22. Whilst I note that the dwellinghouse in this case is not detached, I have not been advised of whether or not the dwellinghouse is on either article 2(3) land or a site of special scientific interest. Neither have I been provided with the height dimensions of the proposed covered pergola. Nevertheless, as an enlargement of the dwellinghouse the covered pergola would extend over 8 metres from its rear wall, which would exceed even the most generous dimensions for a non-detached dwellinghouse referred to in A.1.(g)(i). Furthermore, I have not been advised of any other provision within the Order that would permit the proposed works in this case.
23. Having regard to all of the above, I conclude that the appellant has not discharged the burden that falls upon her as she has failed to show that, on the balance of probability, the proposed works in this case would not amount to development for the purposes of section 55 of the 1990 Act or that the proposed works would be permitted by the Order and would not, therefore, require the benefit of planning permission. Accordingly, the appellant has failed to demonstrate that the development referred to in the application would be lawful if begun on the date the application was made.

Conclusion

24. 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 'to the existing rear playroom structure, existing 4nos. timber single glazed windows to be renewed to Upvc framed double glazed windows; space between rear of main building and rear playroom structure to have timber-framed pergola covered with Upvc corrugated clear roofing sheets; and to use part of the residential property and rear playroom building for a childminding business' 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.

J Moss

INSPECTOR

¹ Land listed in Article 2(3) of Part 1, Schedule 1 of the Order.