



Appeal Decision

Site visit made on 19 June 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 July 2021

Appeal Ref: APP/U5360/X/20/3264491

362-364 Old Street, Hackney, London EC1V 9LT

- 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 (LDC).
 - The appeal is made by Mr T Smith of Neon City & Sefton Commercial Ltd against the Council of the London Borough of Hackney.
 - The application (Ref. 2020/1600) is dated 2 June 2020.
 - 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: "The erection of a two storey roof extension to provide 1 x 2 bedroom self-contained dwelling (use class C3). The effect of the variation would be to add a glazed canopy above the existing entrance at ground floor level."
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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 proposed operation which is found to be lawful.

Application for Costs

2. An application for costs was made by Mr T Smith of Neon City & Sefton Commercial Ltd against the Council of the London Borough of Hackney. This application is the subject of a separate decision.

Preliminary Matters

3. The Council has not provided a completed appeal questionnaire or supporting documents and has indicated it is 'unable to progress with this appeal' (and others) due to what it has referred to as its 'inability to provide documents'. The Council has also not provided an appeal statement or putative reasons for refusal either.
4. In order that the appeal may be concluded, I have determined the appeal on the basis of what information I have been provided with. I am satisfied in this case that there were no extraordinary circumstances such that it was not possible for the Council to engage in the appeal process.

Main Issue

5. The main issue is, if the Council had refused the application, whether the refusal would have been well-founded or not.

Reasons

6. Under section 192(1) of the 1990 Act, if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the operations in question.
7. Under section 192(2), if, on an application under this section, the local planning authority are provided with information satisfying them that the operations described in the application would be lawful if 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.
8. As set out in the Planning Practice Guidance (PPG)¹, the applicant is responsible for providing sufficient information to support an application, and, a lawful development certificate may be granted on the basis that there is an extant planning permission for the development.
9. The appellant seeks an LDC for the continued implementation of a planning permission, Ref: 2017/0417. This was granted on 2 May 2017, for a roof extension to provide an additional dwelling. A subsequent approval, under section 73 of the 1990 Act, Ref: 2019/2215 dated 21 August 2019, varied the proposal by the addition of a glazed canopy above the existing entrance at ground floor level. The development is subject to 4 conditions, summarised below.
10. Condition 1 requires that the development be carried out in strict accordance with the approved plans. Condition 2 requires that the development must be begun within 3 years of 2 May 2017, ie by 2 May 2020. Condition 3 requires the submission of details including external facing materials. Condition 4 requires the submission of a Demolition and Construction Management Plan. The details submitted for Condition 4, were approved by the Council on 13 May 2019, Ref: 2018/3785. As such the pre-commencement clause of Condition 4 was satisfied.
11. On 17 June 2019, an application, Ref: 2019/2214, for the approval of details reserved by Condition 3, was received by the Council. Based on the Council's letter dated 25 June 2019, samples of materials required by Condition 3 had not been provided. A receipt shows these were provided on 18 December 2019, indicating that a decision on the application should have been made by the Council by 12 February 2020, to comply with Article 27(2) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO). A Council letter dated 23 April 2020 indicates a decision was due by 19 May 2020. But no explanation has been provided as to why this later date should apply or how it was calculated and so in light of the above I deem the later date to be erroneous.
12. On 30 March 2020 the appellant gave notice to the Council, pursuant to Article 29 of the DMPO, for the deemed discharge of Condition 3, to take effect 14 days later. Taking into account all provisions of Part 5 of the DMPO, there is no evidence this notice was not properly given and as the Council did not respond to the notice, Condition 3 was deemed discharged.

¹ Lawful development certificates - Paragraph: 006 Reference ID: 17c-006-20140306 and 001 Reference ID: 17c-011-20140306

13. On 19 May 2020, the Council issued a refusal of the aforementioned details application for Condition 3. But this was more than 14 days after the Council had already received notice of the deemed discharge of Condition 3. So this refusal was of no effect and the deemed discharge of Condition 3 had already occurred, ie the Council's approval was already deemed to have been given and so the pre-commencement clause of Condition 3 had, in effect, already been satisfied.
14. It is the appellant's position that the appeal development has begun and so the planning permission has not lapsed. Where development consists both of the carrying out of building operations and a change of use, as is the case here, section 56 of the 1990 Act noted above is clear that development of land shall be taken to be initiated when those building operations are begun, or at the time when the new use is instituted, whichever is the earlier.
15. Section 56 further states 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. In this case, no change of use has yet taken place. But a glazed canopy (noted above) has been installed. The evidence indicates this had occurred by 15 April 2020, ie before the permission was due to lapse.
16. 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. It is the appellant's position that the planning permission was commenced by the installation of the canopy.
17. Based on the information provided, the work carried out, ie the canopy, is a building operation, it accords with the planning permission and it was carried out before the permission was due to lapse and no pre-commencement conditions were outstanding. In my judgment, the canopy is a material operation, ie it is more than de minimis, and so it is sufficient for the development granted planning permission to have begun. Furthermore, there is nothing before me to indicate that the evidence is not sufficiently precise or unambiguous such that a certificate, on the balance of probability, should not be issued.

Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of: "The erection of a two storey roof extension to provide 1 x 2 bedroom self-contained dwelling (use class C3). The effect of the variation would be to add a glazed canopy above the existing entrance at ground floor level," 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



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 2 June 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development described on drawing numbers 100 P.01, 200 P.01, 250 P.02, 251 S.01, 300 P.03, 400 P.04, 500 P.04 and 501 P.04 has been lawfully implemented. This is because of the installation of a glazed canopy, after the deemed discharge of the details required by Condition 3 of the planning permission and the approval of the details required by Condition 4 of the planning permission.

Signed:

L Perkins

Inspector

Date: 2 July 2021

Reference: APP/U5360/X/20/3264491

First Schedule

The erection of a two storey roof extension to provide 1 x 2 bedroom self-contained dwelling (use class C3). The effect of the variation would be to add a glazed canopy above the existing entrance at ground floor level.

Second Schedule

Land at 362-364 Old Street, Hackney, London EC1V 9LT

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 2 July 2021

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Scale: Not to scale

