



Appeal Decision

Site visit made on 29 September 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22nd October 2021

Appeal Ref: APP/N5090/X/21/3270689

2 Marriott Road, Barnet, EN5 4NJ

- 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 Ms Holin Begum against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/4301/191, dated 16 September 2020, was refused by notice dated 19 November 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 retention of existing rear dormer and cladding material.
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Decision

1. The appeal is dismissed.

Procedural Issue

2. The Council have quoted section 192 of the Act in the decision notice which is incorrect. The application was in relation to existing operational development and therefore made under section 191 of the Act. However, it is clear from the reasons given by the Council on the decision notice that the development was existing at the time that the application was made and that it was determined on that basis. The appeal has likewise been determined on that basis.

Main Issue

3. Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.
4. The dormer window is development pursuant to the Act¹ and planning permission is therefore required for it. The Town and Country Planning (General Permitted Development) Order 2015 ('the GDPO') as amended grants planning permission for the classes of development set out in Schedule 2 and is subject to any relevant exception, limitation or condition specified within it.
5. Class B, Part 1 of Schedule 2 of the GDPO permits additions and alterations to the roof of a dwellinghouse provided that the limitations and conditions as set

¹ Section 55, TCPA 1990 defines development as 'the carrying out of building, engineering, mining or other operations.'

out within it are met. The Council accepts that none of the limitations set out in B.1 apply in this case but B.2 (a) states that development is permitted subject to the condition that *'materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse'*.

6. The appellant accepts that the cladding used on the side of the dormer is different to the materials used on the front of the roof and it was evident from my observations made during the site visit that the materials used to construct the dormer are not of a similar appearance to the grey tiles used on the front of the roof as they are not the same size and shape. Condition B.2 (a) has not therefore been fulfilled and the dormer is not development permitted by Class B. The application was stated to be for the retention of the materials used on the dormer but as the development does not comply with all of the necessary conditions none of the development benefits from planning permission under the GDPO and it is all unauthorised.
7. The appellant states on the application form that he is seeking an LDC for building work in breach of a condition. However, an LDC for the failure to comply with a condition or limitation only applies where the time for taking enforcement action has expired, in this case 4 years, which does not apply here as the appellant states that the works took place in 2020.
8. The grant of an LDC is not a retrospective grant of permission for works that have already taken place but rather confirmation that enforcement action cannot be taken against the development. An appeal in relation to an LDC application does not take the planning merits of the development into account, but only considers whether the development is unauthorised (in this case because it did not have either express permission or permission granted under the GDPO). The existence of similar developments or the use of similar materials in the area is therefore not a consideration in an LDC appeal. The refusal to grant an LDC does not preclude the making of a retrospective planning application relating to the development when the planning merits of it would be considered.
9. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the existing rear dormer and cladding material 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.

Zoë Frank's

INSPECTOR