



Appeal Decisions

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th March 2021

Appeal A Ref: APP/W5780/W/19/3228281
223 Dawlish Drive, IG3 9EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for approval required under Schedule 2, Part 1, Class A, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Misbah Uddin against the Council of the London Borough of Redbridge.
 - The application was dated 19 March 2019.
 - The development proposed is a single storey rear extension.
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Appeal B Ref: APP/W5780/X/20/3256843
223 Dawlish Drive, Seven Kings, Ilford IG3 9EH

- 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 Misbah Uddin against the decision of the Council of the London Borough of Redbridge .
 - The application Ref 1886/20, dated 29 June 2020, was refused by notice dated 28 July 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 the construction of a single storey rear extension.
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Decisions

1. Appeal A is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 1, Class A, paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a single storey rear extension at 223 Dawlish Drive, IG3 9EH in accordance with the application made on 19 March 2019, and the details submitted with it pursuant to Article 3(1) and Schedule 2, Part 1, Class A, paragraph A.4(2).
2. Appeal B is dismissed.

Applications for costs

3. Applications for costs were made by Mr Misbah Uddin against the Council of the London Borough of Redbridge. These applications are the subject of a separate Decision.

Preliminary Matters

4. Under section 78 of the Act a person who has made an application for any approval under a development order may appeal where the local planning authority has failed to give notice to the applicant of their decision on the application within the prescribed period. As the appellant considers the Council's purported decision to not determine the application for prior approval was not lawfully made (a matter on which the facts of the case lead me to agree), Appeal A has been made on the basis that the Council failed to determine the application. In view of the wording of section 78 of the Act, I am satisfied that the appellant had the right to lodge the appeal.
5. Planning permission is granted by virtue of permitted development rights for certain types of development subject to specified conditions and limitations. Article 3 Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) relates to development within the curtilage of a dwellinghouse and grants permission for the enlargement, improvement or other alteration of a dwellinghouse.
6. Specifically and relevant to these appeals is paragraph A.1.(g) which permits single storey rear extensions which exceed the limits in paragraph A.1.(f) subject to the requirement that the developer makes an application to the local planning authority (LPA) for a determination as to whether prior approval is required. The procedure for which is set out at Part 1, paragraph A.4.
7. Where the prior approval procedure applies, development cannot lawfully begin until either the LPA has confirmed that prior approval is not required, or the LPA gives their prior approval, or the period prescribed in the Order expires without the LPA having given or refused prior approval.
8. The statutory period in respect of Part 1 Class A is 42 days. Where an application for a determination as to whether prior approval is required complies with the statutory requirements and is valid, the statutory period for consideration of the need for prior approval runs from that date.
9. Since it is apparent that the application for an LDC, subject of Appeal B, was submitted in order to seek to demonstrate that the extension subject of Appeal A could be lawfully implemented, I have determined the appeals together.
10. In reviewing the files, it appeared that the appeals could be determined without a site visit – without causing prejudice to any party. This is because the parties have submitted sufficient evidence to understand the nature of the site and the proposed development given the points in dispute.

Main issues

11. The main issue in Appeal A is having regard to the relevant requirements of Class A and paragraph A.4. of the GPDO, whether prior approval is deemed to be granted.
12. In Appeal B I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

Appeal A

13. The appellant submitted an application for prior approval for a larger home extension which was registered by the Council on 11 March 2019 and subsequently prior approval was refused on 12 April 2019, reference 1068/19.
14. The appellant submitted the application subject of this appeal on 19 March 2019, but the Council did not register the application. There is no dispute that the application was received by the Council on 19 March and no suggestion that it did not meet the necessary requirements to make it valid. However, the Council did not validate or take any further action in respect of the application, and as such failed to issue a decision within the statutory period, that is not in dispute.
15. The Council's case is that the application, was a similar application to that already under consideration (1068/19) and therefore they declined to determine the application exercising their powers under Section 70B of the Act. However, s.70B provides the power to determine overlapping applications but it relates only to applications for planning permission or permission in principle. A point which the Council now concedes.
16. In their appeal statement, the Council referred to the powers which exist under s.70A to decline to determine, amongst other types of applications, applications for prior approval where that application is similar to an application that, within the last two years, has been dismissed by the Secretary of State on appeal or refused following call-in or, it has refused more than one similar application within the last two years and there has been no appeal to the Secretary of State.
17. However, in this case there appears to have been only one previously similar application and that was still under consideration therefore, s.70A could not have been relied upon.
18. Irrespective of the decision the Council purported to make upon receipt of the application, the facts of the case are that the Council did not make a determination within the relevant 42 day period.
19. The Council's failure to validate the application and determine it within the statutory period means that I cannot address any questions as to whether the development is permitted development or about the prior approval matters.
20. The development can lawfully proceed if constructed or carried out in accordance with the submitted plans, and with the conditions and limitations imposed on the planning permission granted by the GPDO.
21. For the above reasons and having regard to all matters raised, I conclude that the failure of the Council to make a determination on the application within the prescribed period means that prior approval is deemed to be granted.

Appeal B

22. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under s.192 of the Act is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time

of the application, it is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

23. In their decision notice the Council's reason for refusal is that the development would not constitute permitted development under Part 1 Class B of the GPDO. However, it is evident from the Council's officer report and subsequent appeal statement that the application was assessed against Part 1 Class A and the reference to Class B was a typographical error. I have determined the appeal on this basis.
24. It is apparent from the submitted application form and supporting statement that the applicant sought to demonstrate that the extension subject of Appeal A could be lawfully implemented.
25. Nevertheless, section four on the application form (Description of Proposal) requires that "in the case of a proposed building the plan should indicate the precise siting and exact dimensions". As part of their submission the appellant included an elevation drawing which was not submitted, nor required, with the application for prior approval.
26. However, on the form submitted with the application for prior approval it is stated that the maximum height of the proposed extension would be 3m and that the height at the eaves would be 3m. The elevation plans submitted with the LDC application show the maximum height to be 3.4m and the height at the eaves to be 2.85m.
27. Whilst only relatively minor differences, the proposed extension is not the same as that for which deemed consent has been granted. As such, and as the proposed extension has a depth of 5.5m, it would fail to meet the Class A.1.(f)(i) requirement as *the enlarged part of the dwellinghouse would have a single storey and extend beyond the rear wall of the original dwellinghouse by more than 3 metres*. Hence it would not be permitted by Class A of Part 1 of Schedule 2 of the GPDO.
28. It follows that the Council's decision to refuse to grant a certificate of lawful use or development in respect of the proposal 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.

Felicity Thompson

INSPECTOR