



Appeal Decision

Site visit made on 21 March 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st March 2022

Appeal Ref: APP/T5720/D/18/3199889

201 Manor Way, Mitcham, London CR4 1EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended.
 - The appeal is made by Mr Bogdan Protas against the decision of the Council of the London Borough of Merton.
 - The application Ref 18/P0947, dated 26 February 2018, was refused by notice dated 6 April 2018.
 - The development proposed is the erection of a 4.0m deep rear single storey extension.
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. The description of development in the banner heading above is taken from the original prior approval notification form submitted by the appellant. The appeal form provided a more detailed description of the dimensions of the proposed extension:

"Application for prior approval in respect of the proposed erection of a single storey rear extension with the following dimensions: extends beyond the rear wall of the original dwellinghouse by 4 metres; the maximum height of the enlarged part of the dwellinghouse will be 3 metres; the height of the eaves of the enlarged part of the dwellinghouse will be 2.7 metres."
3. As well as the rear extension for which prior approval was sought, the drawings submitted by the appellant also showed a new porch on the front elevation of the dwelling. The Council therefore refused to grant prior approval for the extension, stating that "the application cannot be considered under the prior approval process" as a front porch is not within the scope of Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (hereafter "the GPDO").
4. It will be evident from the information set out in the banner heading above that this appeal is somewhat "long in the tooth"; almost four years have passed since the Council issued its decision on 6 April 2018, and the appeal was submitted on the same day. The "start letter" confirming that the appeal was valid and setting out the appeal timetable was sent out to the main parties on

16 March 2020, nearly two years after the appeal was originally submitted, although there is nothing before me to explain why this took such a long time.

5. The Planning Inspectorate case officer contacted the main parties in late June 2020 with a view to arranging access for an Inspector to carry out a site visit. Given the passage of time, they also asked the parties to comment on whether there had been any relevant changes in circumstances at the appeal site since the determination of the original application. The Council responded¹ that on 26 April 2018 it had granted a Lawful Development Certificate ("LDC") in respect of a hip-to-gable and rear roof extension, two front rooflights, and an enclosed porch², and on 14 May 2018 had determined that prior approval was not required for a single storey rear extension, the description of which was the same as that set out in paragraph 2 above³.
6. Site visits were scheduled for July 2020, but the Inspector was not able to access the appeal property's rear garden. The case officer contacted the appellant on 30 July 2020 to attempt to reschedule a site visit, although this did not take place. From that point until March 2022, when I was appointed to determine the appeal, it appears to have been in a state of "suspended animation".

Reasons

7. 201 Manor Way is the end property in a short terrace of four dwellings. The appellant arranged for me to gain access to the rear garden, from where I was able to see that a single storey rear extension had been completed. I also saw from the street that the works described in the April 2018 LDC, including a front porch, had been completed.
8. Permitted development rights granted through the GPDO are subject to a number of conditions and limitations, including those set out at paragraph A.4 of Part 1, Class A, of Schedule 2. Paragraph A.4(10) states that development must not begin before one of three events occurs. These are:
 - (a) the receipt by the developer from the local planning authority of a written notice that their prior approval is not required;
 - (b) the receipt by the developer from the local planning authority of a written notice giving their prior approval; or
 - (c) the expiry of 42 days following the date on which the [necessary information] was received by the local planning authority without the local planning authority notifying the developer as to whether prior approval is given or refused.
9. The requirements of paragraph A.4(10) are, effectively, pre-conditions, and development will not benefit from permitted development rights if one of (a), (b) or (c) has not occurred. There is no dispute that the Council's decision refusing prior approval was issued within the correct timeframe, and there is therefore no question of there being a "deemed consent" for the extension. In this case, prior approval was clearly refused, but the development has,

¹ E-mail from Jonathan Lewis, Merton Council, to Planning Inspectorate, 1 July 2020.

² LPA Ref: 18/P0967

³ LPA Ref: 18/P1409

notwithstanding what appear to be some minor variations from the submitted drawings, been commenced and completed.

10. The appellant has stated that the application was made for the rear extension only, and that this had been communicated to the Council; I have not addressed that matter here, as it could not alter my conclusion. I also note the appellant's comments about the proposal according with the development plan. However, there is no statutory requirement to have regard to the development plan in relation to prior approvals, and again this point could not alter my overall conclusion.
11. It is important to note that the Council's later decision in May 2018 that prior approval for a single storey rear extension was not required does not, indeed cannot, alter my conclusion in this appeal. Permitted development rights only apply when the development, and the implementation of that development, fully accords with the limitations and conditions set out in the GPDO.
12. As it is a prerequisite that prior approval is granted (or stated not to be required) before work commences, it is not possible for prior approval to be granted retrospectively in respect of the February 2018 application through this appeal. It therefore follows that the appeal should be dismissed.
13. Given the background to this case, it is also worth adding a further final observation. Just as the later grant of prior approval for a rear extension cannot alter my conclusion here in respect of the February 2018 application for prior approval, so my conclusion in this appeal does not affect the Council's issuing of an LDC in April 2018, its May 2018 decision that prior approval for a single storey rear extension was not required, or any development carried out lawfully as a result of those decisions. As a result, while it is clearly not satisfactory that it has taken the time it has for this appeal to be determined, the practical effects of this long delay are likely to be negligible for both the appellant and the Council.

Conclusion

14. For the reasons set out above, the appeal is dismissed.

M Cryan

Inspector