



Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Appeal Ref: APP/V5570/X/22/3291185

30 Cornwallis Road, Islington, London N19 4LT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 John Boyd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2021/1686/COL, dated 9 June 2021, was refused by notice dated 8 November 2021.
 - The application was made under section 191(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is the formation of roof terrace and change from window to door.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
3. I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.

Background and Main Issue

4. Section 191(2) of the 1990 Act provides that uses and operations are lawful at any time if (a) no enforcement action may be taken in respect of them ... because the time for enforcement action has expired. Time limits are set out in Section 171B(1). The relevant time limit for a building operation is four years beginning with the date on which the operations were substantially completed. The Council considered that the appellant has not demonstrated, on the balance of probabilities, that the alterations have been substantially completed for a period of four or more years.
5. I must consider whether the local planning authority's refusal to grant an LDC was well-founded.

Reasons

6. The development for which an LDC is sought comprises the replacement of a mono-pitched roof to a two-storey rear extension with a flat roof, which resulted in the formation of a roof terrace, and the replacement of a sash window to a single access door in the rear elevation at second floor level.

Evidence

7. The appellant's evidence includes a Statutory Declaration¹ from the former owners, who were responsible for refurbishing the property, dated 3 June 2021. This lists the works carried out and states that the "alteration to the roof to create a roof terrace with access through the new double doors was completed during 2016". In addition, a witness statement from the owner of No 28 Cornwallis Road has been supplied, which states that the "roof terrace and double doors out onto the terrace" was completed by the summer of 2016. A further witness statement from the owner of No 32 Cornwallis Road confirms the refurbishment work was carried out in 2016 and completed before 2017. This included the creation of a roof terrace and the installation of double doors to enable access to it.
8. Supporting evidence comprises a Building Regulations 'certificate of compliance', dated 28 September 2016, for electrical works which included a rewire. A Final Certificate for Building Control purposes relating to the removal of chimney breasts, a structural opening for rear patio doors and bathroom on the second floor, and replacement windows has been supplied. The Certificate is dated 9 September 2020 and relates to a notice dated 20 May 2016. There is also a domestic electrical installation certificate for rewiring, 28 September 2016.
9. Also supplied is a sellers Property Information Form, dated 22 October 2020, that details building works during 2016, including "removal of chimney breasts, structural opening for rear patio doors, replacement of ground floor and first floor pitched roofs with flat roofs, creation of roof terrace, replacement of windows.." Further documents are a project reference to install under floor heating at the appeal property with a purchase date of 12 July 2016, and a generic information sheet from the installer, and an invoice for windows and doors to be shipped to the appeal property dated 7 October 2016 plus generic information relating to the providers terms and conditions of purchase and warranty.
10. Finally, I am referred to Google 'Streetview' images, apparently dated April 2018 and March 2019, showing the terrace and door, an aerial image dated 2016 which is unclear, and a series of undated photographs.

Analysis

11. The Statutory Declaration carries significant weight as sworn evidence. This specifically refers to the roof terrace and says it was completed in 2016. However, there is some ambiguity in that it also refers to access to the terrace being through the new double doors. The LDC concerns a single access door. The witness statements from neighbours can also be afforded moderate weight. However, while these confirm the creation of the roof terrace in 2016, they both refer to double doors.

¹ Under the Statutory Declarations Act 1835.

12. The appellant asserts that the reference to double doors in the Statutory Declaration is a typo, which has no material bearing on the application. However, the access doorway is an integral part of the development for which the LDC is sought and evidence relating to this aspect of the works is crucial. I have examined the submitted plans and the photographs and it is not apparent to me that double doors could not be accommodated due to size constraints, as is argued. The witness statements also refer to double doors. Again, this creates ambiguity and casts doubt on the veracity of the evidence. I accept that one reference to double doors could be explained as a typo but this cannot be the case with all three statements of fact.
13. The remaining documentation lends some support to the appellant's case but, on the whole, it is imprecise. The building regulations and electrical installation documents do not refer specifically to the matters before me. It is argued that the reference to "structural opening for rear patio doors" concerns the access to the terrace. However, this undermines the argument made in relation to the statements of fact where reference to double doors was dismissed as a typo.
14. The sellers' property information form details the work carried out but is ambiguous in terms of completion dates. The supporting documentation concerns windows and underfloor heating and is very limited and general in nature. There is an invoice for French doors, which the appellant suggests is the access to the terrace. This further undermines other assertions about references to double doors being a mistake. The 2018 and 2019 'Google' images appears to show a terrace with a single access door but are dated after the relevant date for purposes of lawfulness.
15. I have considered the cases referred to but they do not support the appellant's case. *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461 concerns loss of lawful use, which is not relevant to the matters before me. Similarly, *Sage v SSETR & Maidstone BC* [2003] UKHL 22 concerns the exception to development in Section 55(2)(a) of the 1990 Act, which is not at issue here.
16. The appellant insists that the Council has no evidence of its own to contradict their version of events. However, as explained above, the evidence supplied is ambiguous and imprecise. As such, it has not been shown on the balance of probabilities that the alterations have been substantially completed for a period of four or more years prior to the date of the application.

Conclusion

17. 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 formation of a roof terrace and a change from a window to a door 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.

Debbie Moore

Inspector