
Appeal Decision

Site visit made on 8 June 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 01 July 2022

Appeal Ref: APP/N4720/X/22/3295215

53 Primley Park Mount, Alwoodley, Leeds LS17 7JT

- 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 P Connell against the decision of Leeds City Council.
 - The application Ref 21/08357/CLP, dated 6 October 2021, was refused by notice dated 11 February 2022.
 - 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 part single storey part two storey side and rear extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The LDC application was made under section 192 of the Town and Country Planning Act 1990, which relates to proposed developments or uses. The appellant seeks to establish that a planning permission is extant on the grounds that it has been lawfully implemented. It therefore cannot be classed as a proposal for the purposes of the appeal. However, it is open to me to determine an appeal under section 191, which relates to the lawfulness of existing developments, even if the application was made under section 192, and so I have considered the appeal on that basis.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

4. Planning permission ref: P/06/05636/FU was granted on 31 October 2006 for extensions to No 53 comprising a single storey extension to the rear and a two storey side and rear extension, in accordance with the approved plan ref: AL01/B, described as 'Single Plan showing all information', and dated 1 August 2006. However, I have been provided with drawing ref: AL01/D. This appears to relate to a non-material amendment to the scheme and has a date stamp of 18 June 2007. As the Council do not dispute that this is the correct plan, I have taken it into account in my assessment.

5. The 2006 scheme was permitted subject to two conditions, the first requiring the external walling and roofing materials to match the existing, and the second giving three years for the commencement of the development.
6. The appellant argues that the 2006 permission remains extant on the grounds that the development commenced within the three year time limit with the construction of the rear single storey element. This would have the effect of allowing him to implement the two storey element of the scheme as per the approved plans.
7. With regard to the standard time condition, the appellant needs to demonstrate, on balance of probabilities, that the development had started by 31 October 2009. He contends that the single storey rear element of the scheme was constructed prior to that date, as shown in a Google Earth image of 30 May 2009.
8. The image certainly shows some kind of structure in the position of the proposed rear extension. However, in order to succeed, the appellant also needs to show that this development was in accordance with the approved plan. Although the photograph is slightly blurred, it can be made out that the roof of the single storey development comprises four panels, whereas the proposed roof of the single storey element shown on AL01/D has three panels.
9. There is nothing in the appellant's evidence to show whether or not the rear elevation of the single storey extension was built in accordance with the approved scheme. On my site visit, I saw that the rear elevation as built includes four small horizontal windows above the four glazed panels. The small horizontal windows do not appear on plan AL01/D.

Conclusion

10. In summation, then, I have been provided with a plan that is at odds with the photographic evidence of 2009, and also with the development that I saw on site. That being the case, even accepting that some form of development commenced within the three year limit, I cannot be certain that it was fully in accordance with the approved details. I therefore find that the appellant has not shown, on balance of probability, that planning permission ref: P/06/05636/FU was lawfully implemented and therefore remains extant.
11. As set out in the National Planning Policy Guidance, the refusal of an LDC does not preclude another application being submitted at a later date, if more information can be produced.
12. Nevertheless, on this occasion, I conclude that the Council's refusal to grant an LDC was well founded, although for different reasons to those set out above, 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.

Elaine Gray

INSPECTOR