



Appeal Decision

Site visit made on 26 July 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th AUGUST 2022

Appeal Ref: APP/N1920/X/21/3275269

4 Markham Close, Borehamwood WD6 4PQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Philip Tse against the decision of Hertsmere Borough Council.
 - The application ref 20/2127/CLP, dated 22 December 2020, was refused by notice dated 15 March 2021.
 - 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 a loft conversion with rear dormer and front skylights.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. A development similar to that in the description set out in the banner heading above has clearly already been undertaken at the appeal property. Nevertheless, the relevant date for determining the lawfulness of carrying out the development applied for is that on which the application was made. On both the application and appeal forms, the appellant stated that development had not been started before the application date. There is no evidence before me which would indicate otherwise. Consequently, I shall deal with the appeal on the basis that the application was made for a proposed development under s192 of the Act.

Application for Costs

3. An application for costs was made by Mr Philip Tse against Hertsmere Borough Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue in this appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether the appellant has shown that, on the balance of probability, planning permission is granted for the proposal by Article 3, Schedule 2, Part 1, Class B and Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

5. The property contains a detached, two storey dwelling. The drawings accompanying the application show a proposed dormer enlargement on the

rear roof slope of the dwelling, together with rooflights installed on the front roof slope.

6. I am given to understand that the dwelling was erected pursuant to the planning permission reference TP/97/0760 granted on 5 May 1998, for the demolition of four houses and erection of fourteen four-bedroom detached houses. Conditions were attached to that permission, including condition No 11 which states: *"Notwithstanding the provisions of Part 1 Classes A, B and C to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order) no extensions to the dwellinghouse(s) hereby permitted shall be erected and no roof alterations shall be carried out without express planning permission first being obtained"*.
7. There was no evidence to suggest that the above permission was not implemented or that the dwelling was erected pursuant to a different permission. A previous version of the GPDO was in force at the time that permission was granted. However, the Courts have held that conditions removing permitted development rights under the GPDO have a continuing effect in respect of subsequent versions of that legislation¹. Therefore, the effect of condition 11 is to restrict the enlargement of the dwelling in a manner otherwise permitted by the GPDO unless express planning permission is first obtained.
8. At Article 3, Schedule 2, Part 1 the GPDO grants planning permission for certain development within the curtilage of a dwelling. This includes in Part 1 Class B, additions to the roof of a dwelling and in Class C, any other alteration to the roof, in both instances where the relevant limitations and conditions in those Classes are met. However, the grant of permission is not absolute and is qualified by other statutory provisions. The effect of the GPDO at Article 3(4) is that development cannot be permitted by that Order where it would be contrary to a condition on a grant of express planning permission. The proposal would enlarge and alter the roof of the dwelling and so falls squarely within the description of development restricted by condition 11.
9. I was not made aware of any grant of express planning permission that had the effect of removing condition 11. Therefore, the proposal would be contrary to condition 11 and cannot be permitted by the GPDO, even if the relevant size and locational limitations and the conditions set out in Part 1, Class B and C of Article 3, Schedule 2, would otherwise be met.
10. Reference was made to an LDC granted by the Council for a similar proposal at a property nearby in January 2019². The Council subsequently informed the appellant that the decision made in that instance was in error, as a similarly restrictive condition also applied to enlargements in respect of that property. I can well understand and indeed sympathise with the appellant's sense of frustration in this respect. Nevertheless, the granting of an LDC at a nearby property is not binding on future decisions. This is because the consideration of whether an LDC should be issued is strictly a matter of fact and law. A decision which certified that a development is lawful for planning purposes when that is clearly not the case is liable to be struck down by the Courts.

¹ *R v Tunbridge Wells BC ex parte Blue Boys Developments Ltd* [1990] 1 PLR 55; [1990] JPL 495.

² Council Ref: 18/2233/CLP.

Therefore, the Council's decision on the application at the nearby property can have no bearing on the outcome of this appeal.

11. Consequently, on the balance of probability the appellant has not shown that the proposal would benefit from the planning permission granted by the GPDO. It follows that in the absence of a grant of express planning permission after the submission of an application, the proposal would not be lawful for planning purposes. No such grant of permission was drawn to my attention.
12. It is open to the appellant to make a planning application to the Council in respect of the proposal; this should not be taken however as any indication of the likely success of such an application; that is a matter for the Council to consider in the light of all the circumstances.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a loft conversion with rear dormer and front skylights 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.

Stephen Hawkins

INSPECTOR