

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 30 September 2022

Appeal Ref: APP/R5510/X/22/3290869

18A Elgood Avenue, Northwood HA6 3QH

- 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 Rohit Goel against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 47802/APP/2021/2466, dated 21 June 2021, was refused by notice dated 29 October 2021.
 - The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is decking to the main garden of the dwelling house.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For the avoidance of doubt, an appeal under section 195 of the Act must be determined on matters of lawfulness alone. Matters of planning merit are not at issue. Further, rights under the Human Rights Act 1998 are not engaged in the context of the appeal.
3. The time taken for the Council to determine the LDC application is also not a relevant consideration in my determination of the appeal.

Main Issue

4. The main issue in this appeal is whether or not the Council's refusal of the LDC application was well-founded.

Reasons

5. Under section 191(2) of the Act, uses and operations are lawful at any time if:
 - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason);
 - and
 - (b) they do not constitute a contravention of any of the requirements of an enforcement notice then in force.

6. On 19 March 2019, the Council issued an enforcement notice¹ alleging the erection of a single storey side extension (verandah) and requiring its demolition. The appellant appealed against that notice but the appeal was dismissed and the notice was upheld². Accordingly, the notice was not quashed and is therefore in force.
7. The appellant accepts within his submissions that the development subject to the LDC application is the same as is the subject of the enforcement notice - but with the polycarbonate roof canopy removed.
8. In essence, the appellant argues that the removal of the canopy has resulted in full compliance with the enforcement notice since a verandah no longer exists. Further, that the remaining works in the form of the decking are permitted development by reason of compliance with the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). On this basis, he argues that the development is lawful and that a LDC should be issued in respect of it.
9. However, the notice requires demolition of the verandah – not part of it. A verandah is understood to be a gallery, platform, or balcony, usually roofed and often partly enclosed, extending along the outside of a building at ground level³. Section 285 of the Act provides that the validity of an enforcement notice, except by way of an appeal against it, cannot be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought. Were the appellant of the view that the notice requirements were excessive, his appeal against the enforcement notice could have included an argument under ground (f) of section 174 of the Act that those requirements be varied so as to require the removal of the canopy rather than demolition of the verandah as a whole. In the absence of such a successfully argued ground, the unvaried notice in force requires all of the verandah to be demolished. The decking which is the subject of the LDC application constitutes a contravention of the notice since it is a part of the verandah which has not been demolished.
10. For these reasons, section 191(2)(b) provides that the development in this appeal is not lawful regardless of whether it would otherwise be lawful under section 191(2)(a).

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of decking to the main garden of the dwelling house 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.

Andrew Walker

INSPECTOR

¹ HS/ENF/014976

² APP/R5510/C/19/3226936, date of decision 19 November 2019

³ *Permitted development rights for households - Technical Guidance*; September 2019; Ministry of Housing, Communities and Local Government (p29).