
Appeal Decision

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 28 MARCH 2023

Appeal Ref: APP/W0530/X/21/3286883

Poplar Cottage, Nosterfield End, Shudy Camps CB21 4TE

- 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 Mrs Sarah Sepanski against the decision of South Cambridgeshire District Council.
 - The application Ref 21/01540/CLUED, dated 5 April 2021, was refused by notice dated 2 July 2021.
 - The application was made under section 191(1)(b) the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as 'Single storey rear kitchen extension to detached house. Work completed June 2017. Distance from back wall of 'original' house to new back wall is 5.25m. Height of apex is 3.8m, height of eaves is 2.5m. Internal extension space is c. 5m x 5m (25m sq). House prior to extension is c. 200m sq (extension is 12.5% of previously existing living area)'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal has been determined without a site visit on the basis that there is sufficient evidence before me to understand the nature of the site and the development, given the points in dispute between the parties. No objection was raised by either party to this approach.
3. The appellant submitted new evidence with the appeal which was not before the Council when it made its decision. Since s195(2) of the Town and Country Planning Act 1990 (1990 Act) refers to whether or not the Council's refusal was well-founded, rather than the reasons for that decision, it is appropriate that I consider the new evidence.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development ('LDC') was well-founded. This will turn upon whether the extension described in my banner heading above was lawful as at the date of the LDC application. Planning merits are not relevant to the assessment and the onus is on the appellant to make their case on the balance of probability.

Reasons

Legislative position

5. Section 55 of the 1990 Act defines development requiring planning permission as including the carrying out of building operations. Subsection 191(2) of the 1990 Act then states that operational development is lawful at any time if: (a) no enforcement action can be taken in respect of those operations (whether because they did not involve development, or require planning permission, because the time for enforcement action has expired, or for any other reason). This is subject to the proviso that they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
6. One such 'other reason' why operations may be lawful is because planning permission has been granted in respect of them. This can be a specific grant of planning permission, or by deemed planning permission granted by Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ('GPDO') which grants planning permission for the classes of development described as permitted development in Schedule 2.
7. Class A of Part 1 of Schedule 2 to the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse subject to various conditions, exceptions and limitations. Single storey extensions which extend beyond the rear of the original house by more than 4m and less than 8m in the case of a detached house are subject to a neighbour consultation scheme regarding the impact of the proposed development on the amenity of adjoining premises.
8. Condition A.4 of Class A indicates that before constructing such a larger extension, there is a requirement to notify the Council about the proposed development, providing details including a plan indicating the site and showing the proposed development¹. Following this, the Council must give notice to adjoining owners/occupiers and an opportunity to make representations in relation to the proposed development. Condition A.4(10) stipulates that works on the development proposed must not commence until either: (a) the Council notifies the applicant that no prior approval is required; (b) the Council issues prior approval; or (c) 42 days have elapsed from the submission of the required information in Condition A.4(2) without any decision from the Council.
9. There appears to be no dispute in this case as to whether the appeal development meets with the various size related restrictions for larger extensions in Class A if the prior approval process had been followed. Rather, the point in contention as regards Class A is whether or not the prior approval process was properly followed such that the appellant has gained deemed prior approval by elapsing of the 42-day period specified in Condition A.4(10).
10. As to whether no enforcement action can be taken in respect of those operations, S171B of the 1990 Act provides that where there has been a breach of planning control by the carrying out of building operations without planning permission, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

¹ Condition A.4(2)

Parties' positions

11. The Council's decision notice in respect of the LDC application states that the extension projects more than 4m beyond the rear wall of the dwellinghouse and so does not meet with the size restriction in A.1(f), and that the larger permissible size restriction in A.1(g) does not apply as 'no Prior Approval process was carried out before erection of the extension'.
12. Thus, the Council's position is effectively that the 42-day period in Condition A.4(10) did not start to run on the basis that the application for prior approval was not validly submitted due to plans not being supplied with the application, which meant it was not validated by the Council.
13. The appellant's submission is that 'Prior Approval was sought before the erection of the extension', but following 'administrative errors at the Council', the application for prior approval was not considered. In this regard, the appellant has submitted with this appeal new evidence in the form of a copy of an email sent from the appellant to the Council on 18 April 2017 attaching copies of outstanding plans requested by the Council.

History of prior approval application

14. The appellant originally submitted an application to the Council on 11 March 2017 which was submitted on a LDC application form but was effectively seeking prior approval in respect of the appeal extension detailed above. A letter was sent from the Council to the appellant on 27 March 2017 indicating the application to be invalid, requesting additional plans and advising that the application would be shredded, and fee returned if the additional documents were not provided by 24 April 2017.
15. Per the appellant's new evidence, the appellant emailed the Council on 7 April 2017 attaching a copy of the site/location plan and existing elevation plan and advising that the additional plans outstanding would be sent by her contractor to the Council. The Council case officer responded on 13 April 2017 indicating that these documents had been sent to the registration team. A further email was then sent from the appellant to the Council on 18 April 2017 stating that it was attaching the outstanding plans, along with those already submitted on 7 April 2017. Finally, an email dated 30 August 2017 was sent from the appellant to the Council asking whether the 18 April 2017 emailed documents had been received and essentially seeking to complete the process to 'ensure that all paperwork is in order' for any future sale of the property.

Analysis

16. On the evidence before me, whilst it is clear that the appellant sent an email to the Council on 18 April 2017 stating that it was attaching the outstanding plans, it is not clear from the email correspondence provided whether or not the plans were actually attached to that email. This is because the chain of emails submitted in evidence shows the plans as being attached to an email at the top of the chain, rather than to the 18 April email; I do not have a screenshot of the 18 April email as it was sent to enable me to determine the position. In view of this and the Council's firm submission that plans were not received, the appellant has not made her case on this point on the balance of probability. As such, the 42-day period did not start to run from this date.

17. Whilst not determinative in view of my assessment above, even if the outstanding plans had been received by the Council on 18 April 2017, on the limited available evidence, it appears possible that works were commenced before the expiry of 42 days from that date. There are various references in the submitted evidence indicating works likely having commenced in April 2017: the 7 April 2017 email from the appellant to the Council refers to 'an extension to be commenced' on 11 April 2017; the LDC application form describes the development as an 'existing use' and then in response to the question 'When was the use or activity begun, or the building works substantially completed?' responds as 11 April 2017; the Building Regulations Certificate submitted also refers to notification of the works on 11 April 2017.
18. This would therefore represent a breach of the Condition A.4(10) pre-commencement condition which stipulates that the development must not begin before the occurrence of either the Council confirming prior approval is not required, prior approval being granted, or 42 days passing from the date of all information required being received by the Council.
19. I therefore find that the appeal development is not lawful by means of being granted deemed planning permission under Class A.
20. As to whether the development could have been lawful by reason of the time for taking enforcement action having expired, as outlined above, s171B stipulates a four-year enforcement period running from the date of substantial completion of the works. It appears from the available evidence that works were likely substantially completed in June 2017 since this is the date stated in the description of development in the LDC application. Whilst more than four years has therefore passed from substantial completion of the works as at the date of this appeal, I am required to assess whether the appeal development was lawful as at the time of the LDC application². The LDC application was dated 5 April 2021 and thus, as at the date of the LDC application, four years had not passed since substantial completion such as to render the appeal development immune from enforcement action. Consequently, the appeal development was not lawful at the date of the LDC application.

Conclusion

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

Decision

22. The appeal is dismissed.

V Bond
INSPECTOR

² s191(4) 1990 Act