



Appeal Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2023

Appeal Ref: APP/L5810/X/22/3307652

15 Vicarage Road, Hampton Wick, Kingston upon Thames KT1 4EB

- 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 Martyn Booth against the decision of Richmond Upon Thames London Borough Council.
 - The application ref 22/0496/PS192, dated 15 February 2022, was refused by notice dated 28 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 Creation of a hip to gable dormer to the west facing roof of the property, including installation of obscured glass to the Juliet balcony and installation of 4 roof lights to the east facing roof.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a certificate was well-founded. This turns on whether the utilisation of permitted development rights at the property is restricted by a planning condition.

Reasons

3. The appeal property is a semi-detached house. It is common ground that the works proposed amount to development in line with Classes B and C of Part 1 of Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended) (the 2015 GPDO), a view I share. The question is whether a planning condition that applies to the property means that those permitted development rights do not apply in this instance.
4. In March 1988, planning permission was granted for 'Alterations to and conversion of property to form a pair of semi-detached houses together with garage and parking facilities'. It appears that the permission was implemented. Condition 47 of the permission states 'Notwithstanding the provisions of the Town and Country Planning General Development Orders 1977-81 no external alterations or extensions shall be carried out to the houses hereby approved'. The reason given for the condition is 'to safeguard the amenities of the occupiers of neighbouring property'. It is the Council's case that this condition has the effect of disapplying the rights conveyed by classes B and C, such that specific planning permission is required for the proposed works.
5. The intention of the condition is clearly to prevent external alterations or extensions to the houses. It is very wide-ranging, but the appellant does not

attack the planning objectives of the condition. Rather, the question is whether the condition is no longer effective due to changes in legislation.

6. The reference in the condition to Town and Country Planning General Development Orders 1977-81 is now out of date, permitted development provisions currently being set out in the 2015 GPDO (as amended). However, I do not see that that changes the effect of the condition, which is to ensure that no external alterations or extensions shall be carried out to the houses. It no doubt included the wording 'Notwithstanding the provisions of the Town and Country Planning General Development Orders 1977-81' to address any possible suggestion that the permitted development rights that applied at that time could override the condition. Since that legislation no longer exists, it clearly cannot override the condition now, and so reference to it is no longer of any practical consequence. But I am not persuaded that that changes the effect of the condition in terms of what it prohibits.
7. Of course, the substance of the permitted development rights are now different to those that applied when the condition was imposed, and could not have been foreseen by the Council at that time. However, there is nothing remarkable in the types of alterations set out in classes B and C and they fall naturally within the meaning of 'external alterations or extensions'. Accordingly, it is clear that the kind of development the condition sought to retain control over includes that now set out in classes B and C. The proposed development therefore conflicts with the condition.
8. Can the 2015 GPDO override the condition? It is a matter of agreement that the development is of a type described by Classes B and C, as outlined above. However, those are given effect by Article 3. Article 3(4) says 'Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order'. Thus, there is clearly no intention for permitted development rights to override planning conditions where, as in this case, they clearly prohibit the development proposed.
9. The appellant points out that the condition was imposed under the provisions of the Town and Country Planning Act 1971, rather than the current 1990 Act. However, there is clear continuity in the legislation, both Acts making provision to attach planning conditions. Thus, while the 2015 GPDO refers to the current 1990 Act, I am not persuaded that this undermines the effectiveness of conditions imposed under the 1971 Act. The appellant refers to legal advice suggesting that the condition is no longer effective, but I have not been provided with that advice. While the disputed condition could have included a reference to future legislation, the evidence before me does not show that the absence of such a reference renders the condition ineffective. On the evidence before me, I find that the condition prevents the application of the Class B and C rights to this property.

Conclusion

10. 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 creation of a hip to gable dormer to the west facing roof of the property, including installation of obscured glass to the Juliet balcony and installation of 4 roof lights to the east facing roof 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 and dismiss the appeal.

Peter Willows

INSPECTOR