



Appeal Decisions

Site visit made on 29 March 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2023

Appeal A Ref: APP/Z5060/X/22/3294412

70 Burlington Gardens, Chadwell Heath RM6 6ET

- 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 Lakhvinder Singh against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 21/02283/CLUE, dated 16 December 2021, was refused by notice dated 26 January 2022.
 - The application was made under section 191(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 described as: *"Loft conversion with a full rear dormer & velux windows to the front to dwellinghouse"*.
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Appeal B Ref: APP/Z5060/C/22/3294413

Land and premises at 70 Burlington Gardens, Romford RM6 6ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Lakhvinder Singh against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 8 February 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised development of a dormer roof.
 - The requirements of the notice are:
 - Remove the unauthorised dormer roof.
 - Remove all subsequent waste material from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any operations which have been carried out in, on, over or under land are lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the operations.

4. Section 191(2) of the same Act states that for the purposes of this 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 any enforcement notice then in force.
5. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
6. In a lawful development certificate appeal and in a ground (c) enforcement notice appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities. As set out in Planning Practice Guidance (PPG), the applicant is responsible for providing sufficient information to support an LDC application¹.
7. The PPG is clear that planning merits are not relevant at any stage in a lawful development certificate application or the appeal process for such an application². In addition, no ground (a) appeal has been made for the enforcement notice appeal. So there is no deemed application for planning permission before me, meaning that I cannot take planning merits into account in the enforcement notice appeal either.
8. Prior to reaching my decisions, via an email dated 30 March 2023, the views of both main parties were invited on the implications for the appeals of Article 3(5) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). I have taken the comments received into account in my reasoning.
9. In addition, via an email dated 25 April 2023, confirmation was sought from the Council of when enforcement notices relating to the appeal building had been complied with. The appellant's comments on the Council's response were invited via an email dated 9 May 2023 and I have taken them into account.

Main Issues

10. The main issue in Appeal A is whether the decision of the Council to refuse the lawful development certificate was well-founded or not.
11. The main issue in Appeal B is whether the matters stated in the enforcement notice constitute a breach of planning control, ie the ground (c) appeal.

Reasons

12. In considering both of the above main issues, the decision in each appeal turns on whether the appeal development is permitted development, pursuant to the Order, which grants planning permission for specified forms of development. This is consistent with the appellant's case.

¹ Lawful development certificates – Paragraph: 006 Reference ID: 17c-006-20140306

² Lawful development certificates – Paragraph: 009 Reference ID: 17c-009-20140306

13. Article 3(5) of the Order states that the permission granted by Schedule 2 does not apply if— (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful.
14. In light of the above, if any unlawful development subsisted when the appeal development was begun, it would not be permitted development due to Article 3(5) of the Order. This is notwithstanding any other reason why the appeal development may not be permitted development.
15. The planning and enforcement history provided indicates that by 2019 an unauthorised rear extension had been constructed on the appeal building, Ref 19/00275/NOPERM. From the information provided, an enforcement notice was issued in respect of that rear extension and a subsequent appeal against that notice was dismissed. The Council has confirmed that the date of compliance with that enforcement notice was 8 March 2022. This date has not been contested by the appellant.
16. Section 7 of the application form for the lawful development certificate application indicates that the appeal development before me was substantially completed on 16 December 2020. On the balance of probability, this strongly indicates that the appeal development was begun with unlawful building operations on the building and this means that the appeal development was precluded by Article 3(5) of the Order. Nothing has been provided to satisfy me that this was not the case, bearing in mind that the burden of proof in these appeals is on the appellant.
17. As a consequence of the above, the appeal development in Appeal A and Appeal B was not permitted development when it was begun.
18. I have taken into account the appellant's view that 'there is no unlawful development at the appeal site'. But the Order does not grant retrospective planning permission and so the appellant would need to have demonstrated that the appeal development was permitted by the Order when it was begun and no evidence to this effect has been provided.
19. In its report, the Council has stated the following:

"...the development taking place at roof would not be lawful under Class A of the Town and Country Planning Order 2015 because the height of the eaves of the rear dormer window has been raised higher than that of the dwellinghouse. This is specifically by virtue that the gable end wall has been raised to facilitate the dormer beyond the allowances of a 'hip-to gable- under Class A and the resulting development incorporating more elements than an alteration to the 'roof' given there is an extension to the gable wall."

and

"...the application fails to demonstrate that the development would comply with Class A because the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse."
20. But the raised gable end wall is a function of the enlargement of the roof and hip-to-gable enlargements are specifically envisaged by Class B of the Order,

as indicated by the wording of Condition B.2. (b)(i) of Class B. Therefore, the appeal development should be assessed under Class B of the Order (the enlargement of a dwellinghouse consisting of an addition or alteration to its roof) rather than Class A (the enlargement, improvement or other alteration of a dwellinghouse). However, this makes no difference to my overall conclusions given my findings in respect of Article 3(5), set out above.

21. For the same reason, neither planning permission Ref 07/00757, nor the examples of extensions elsewhere, all referred to by the appellant, make any difference to my overall conclusions either. Moreover, whatever planning permission has been granted on the appeal property, this is a planning merits argument that I cannot take into account in these appeals, as set out above.

Conclusions

22. Appeal A: For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "*Loft conversion with a full rear dormer & velux windows to the front to dwellinghouse*", 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.
23. Appeal B: For the reasons given above, I conclude that the appeal should not succeed and I shall uphold the enforcement notice.

L Perkins

INSPECTOR