



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: 13th June 2023

Appeal Ref: APP/Z5630/X/22/3311727

Land to rear of 171 Surbiton Hill Park, Surbiton KT5 8EL

- 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 T Haines (Jetopa Limited) against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 22/02847/CEU, dated 1 September 2022, was refused by notice dated 11 November 2022.
 - The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.
 - The certificate of lawful use or development is sought to confirm that planning permission 06/16289/FUL was lawfully begun in accordance with condition 1 prior to the expiry of the 3-year time limit.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. It was not necessary for me to conduct a site inspection to determine this appeal, with a decision made on the evidence submitted within the papers.

Main Issue

3. The main issue in this appeal is whether or not the Council's decision to refuse to issue the LDC was well-founded.

Reasons

4. On 7 September 2006, the Council granted planning permission 06/16289/FUL for 'Demolition of existing garage. Erection of block of 3 single storey detached garages to rear of property'. Condition 1 of that permission required that the development permitted shall be commenced within 3 years of the date of decision.
5. The Council's decision notice on the LDC says that insufficient evidence has been submitted, on the balance of probability, that the garage was demolished within the 3-year time limit (that is to say, by 7 September 2009).
6. In line with well-established planning principles, as the Council has not submitted any evidence of its own (or from others) to contradict or otherwise make the appellant's version of events less than probable, there shall be no good reason for me to dismiss the appeal *provided* the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

7. The appellant's evidence is very limited and largely depends on a consideration of 2 satellite images of the appeal site from 2003 and 2006. The images are not very clear and are rather unsatisfactory in making the appellant's case. I cannot see in the 2003 image where the garage is situated on the land, and the appellant has not assisted in that regard by making any indication or annotation in respect to the image. While the appellant's statement says that the 2006 image shows that there is no longer a garage at the premises, that is not sufficiently demonstrated by the photograph as I can see that structures are present on the land including one apparently (though, again, unclear) situated near the service road at the rear.
8. Accordingly, the appellant's evidence is not sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

Conclusion

9. 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.

Andrew Walker

INSPECTOR

