



Appeal Decisions

Site visit made on 22 March 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Appeal A Ref: APP/Q5300/X/22/3300448

129 Beaconsfield Road, Enfield EN3 6AP

- 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 Savas Hurman against the decision of the Council of the London Borough of Enfield.
- The application ref 22/00980/CEA, dated 17 March 2022, was refused by notice dated 12 May 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 *Erection of outbuilding to the rear to be used gym/play area ancillary to the main dwelling.*

Appeal B Ref: APP/Q5300/W/22/3312304

129 Beaconsfield Road, Enfield EN3 6AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Savas Hurman against the decision of the Council of the London Borough of Enfield.
- The application Ref 22/02499/VAR, dated 6 August 2022, was refused by notice dated 3 October 2022.
- The application sought planning permission for the erection of a detached 4-bed single family dwellinghouse with integral garage without complying with conditions attached to planning permission Ref TP/01/1243, dated 7 November 2001.
- The conditions in dispute are Nos 1, 10, 11 and 12 which state that:
 1. The development shall not commence until details of the external finishing materials to be used have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
 10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any amending Order, no external windows or doors other than those indicated on the approved drawings shall be installed in the development hereby approved without the prior approval in writing of the Local Planning Authority.
 11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any amending Order, no buildings or extensions to buildings shall be erected without the prior approval in writing of the Local Planning Authority.
 12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any amending Order, no walls, fences, gates or any other means of enclosure shall be erected on any part of the site lying between any wall of buildings fronting a highway and the highway boundary.
- The reasons given for the conditions are:
 1. To ensure a satisfactory external appearance.

10. To safeguard the privacy of the occupiers of adjoining properties.
 11. In the interests of the amenities of the adjoining occupiers.
 12. In the interests of the amenities of the adjoining occupiers.
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Decisions

1. Appeal A is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.
2. No further action is taken in respect of Appeal B.

Preliminary Matter

3. In the decision notice in respect of Appeal A, the Council referred to planning permission reference TP/98/0355. However, they attached a copy of planning permission reference TP/01/1243 to their questionnaire. I have considered Appeal A based on that planning permission, in the absence of further explanation.

Background

4. Planning permission TP/01/1243 was conditionally granted on 7 November 2001 for a development described as *Erection of a detached 4-bed single family dwellinghouse with integral garage*. Condition number 11 on the permission states:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any amending Order, no buildings or extensions to buildings shall be erected without the prior approval in writing of the Local Planning Authority.

5. Condition 13 on the permission is the standard time limit condition, being five years at that time. Accordingly, the permission would have expired on 7 November 2006 unless a material operation was carried out and the permission begun.
6. On their application form, in respect of the application subject of Appeal B (removal of conditions), the appellant stated that the development was started on 31 December 2008. The officer report in respect of Appeal B referred to planning permission TP/01/1243 however, their assessment did not appear to relate to the conditions on that permission, the numbers were correct, but the subject matters were different.
7. I also noted from the officer report in respect of Appeal B, that a further planning permission was granted in March 2010 for the erection of a two-storey four-bed single family dwelling with rear dormer and integral garage, reference TP/09/1656.
8. Given the similarities in the descriptions of permissions TP/01/1243 and TP/09/1656, the appellant's acknowledgement that the development was not started until 31 December 2008, and the confusion in the officer report, I sought clarification from the parties about whether planning permission TP/01/1243 had begun before the deadline and the relevance, if any, of planning permission TP/09/1656.
9. The appellant responded but could not provide an explanation. The Council failed to respond.

10. Consequently, based on the evidence before me and the balance of probabilities, the development authorised by planning permission TP/01/1243 was not begun before the deadline and therefore the planning permission is not extant.

Main Issues

11. In respect of Appeal A, the main issue is whether the Council's decision to refuse to issue an LDC was well-founded.
12. Based on the above, the main issue in Appeal B is whether planning permission TP/01/1243 is extant.

Reasons

Appeal A

13. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under section 192 is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application, it is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
14. Article 3(1) Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants permission for the provision within the curtilage of a dwellinghouse of any building, enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such subject to certain conditions and limitations.
15. The Council accepts that the proposed building would comply with all the limitations set out in Class E.1 and I have no reason to conclude otherwise.
16. However, to benefit from any planning permission granted by Article 3 of the GPDO, the development must not be contrary to any condition on an existing planning permission; Article 3(4). The application was refused by the Council on the basis that it would be contrary to a condition attached to a planning permission.
17. As set out in the background, planning permission TP/01/1243 was not begun before the deadline and therefore the planning permission is not extant.
18. Consequently, in the absence of evidence of a valid planning permission and condition that would restrict those permitted development rights granted by Article 3(1) Schedule 2 Part 1 Class E of the GPDO, the proposed outbuilding would constitute permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO.

Appeal B

19. The application sought the removal of conditions 1, 10, 11 and 12 from planning permission reference TP/01/1243.
20. However, it is not possible to 'remove' or 'vary' condition/s attached to a lapsed permission and there can be no section 73 appeal.

21. I have found, on the balance of probabilities, that planning permission TP/01/1243 was not begun and therefore there is no extant permission. Accordingly, section 73 does not apply, and I take no further action on the appeal.

Conclusions

Appeal A

22. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the *Erection of outbuilding to the rear to be used gym/play area ancillary to the main dwelling* was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal B

23. I have concluded that planning permission TP/01/1243 has lapsed and in these circumstances the appeal does not fall to be considered.

Felicity Thompson

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 17 March 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposal constitutes development within the meaning of section 55 of the Town and Country Planning Act 1990 for which planning permission is required. Planning permission is granted by Article 3(1) Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) since the development falls within Part 1 Class E of the GPDO.

Signed

Felicity Thompson

Inspector

Date: 21 June 2023

Reference: APP/Q5300/X/22/3300448

First Schedule

Erection of outbuilding to the rear to be used gym/play area ancillary to the main dwelling, as shown on drawings numbered 1462-00, 1462-10, 1462-20 rev B, 1462-25 rev B, 1462-30 rev B, 1462-40 rev B, 1462-50 rev B, 1462-60 rev B, 1462-70 rev B, 1462-80 rev B, 1462-90 rev B.

Second Schedule

Land at 129 Beaconsfield Road, Enfield EN3 6AP

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 21 June 2023

by Felicity Thompson BA(Hons) MCD MRTPI

Land at: 129 Beaconsfield Road, Enfield, EN3 6AP

Reference: APP/Q5300/X/22/3300448

Scale: Not to Scale

