



Appeal Decision

Site visit made on 9 January 2024

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2024

Appeal Ref: APP/N4720/X/23/3327797

17 Oakdene Court, Alwoodley, Leeds LS17 8XS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mr Samie Zia against the decision of Leeds City Council.
 - The application ref 23/03373/CLP, dated 2 June 2023, was refused by notice dated 25 July 2023.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a certificate of lawful use or development is sought is a single storey rear extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application sought a certificate of lawful use or development (LDC) for a proposed development. The onus is on the appellant to make their case to the standard of the balance of probabilities, or whether something is more likely than not. Issues of planning merit are not relevant. Under s191(4) and s192(2) of the Act, the relevant date for ascertaining whether the proposed development would be lawful, is the date of the LDC application.
3. Planning permission was granted in 1983 under permission reference H30/86/83 (the original permission) for a development of over 500 houses. 17 Oakdene Court was built under that permission. The permission was granted subject to conditions, including condition 7 which specified that "Notwithstanding the provisions of Schedule 1, Class I (1-5) and Class II (1 and 2) of The Town and Country Planning (GDO) 1977-81, planning permission shall be required for any development of this land as defined in the aforementioned parts of the order."
4. When it was in force, Schedule 1, Class I of the GDO granted permitted development rights for various forms of development within the curtilage of a dwellinghouse. Schedule 1, Class I (1) related to "The enlargement improvement or other alteration of a dwellinghouse". The GDO was subsequently replaced by The Town and Country Planning General Permitted Development Order, the current version of which is The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC for the proposed erection of an outbuilding was well founded.

Reasons

6. 17 Oakdene Court is a two storey dwellinghouse at the end of a short terrace. The proposed development, as set out in the submitted drawings, is for a single storey rear extension. The application sought to demonstrate that the proposed extension would be development permitted under Article 3(1) Schedule 2 Part 1 Class A of the GPDO and would hence be lawful.
7. Part 1 of the GPDO relates to development within the curtilage of a dwellinghouse, with Class A permitting the enlargement, improvement or other alteration of a dwellinghouse, subject to exceptions set out in A.1 and A.2 and conditions at A.3 and A.4. The plans submitted with the appeal show a proposed single storey rear extension of a height, depth, footprint, location and materials which would comply with the relevant exceptions and condition of Schedule 2 Part 1 Class A of the GPDO. The Council acknowledge this in their appeal statement.
8. However, in order 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 parties agree that the original permission has been implemented and that the appeal dwelling was constructed under that permission.
9. The Council contend that condition 7 of the original permission removed permitted development rights, including those for the enlargement improvement or other alteration of a dwellinghouse. They maintain that notwithstanding the subsequent change in the legislation under which permitted development rights are granted (from the GDO to the GPDO) the appeal dwelling is still subject to condition 7 and does not have permitted development rights which would allow for the dwelling to be extended. Contrary to this, the appellant contends that following the revocation of the GDO, condition 7 of the original permission ceased to have effect, so the appeal dwelling can benefit from the permitted development rights set out under Schedule 2 Part 1 Class A of the GPDO.
10. I acknowledge that more modern conditions specify which permitted development rights are being removed, make reference to the relevant part of the Order, and include a clause along the lines of "or any order revoking and re-enacting that Order with or without modification". However, case law¹ has confirmed that even if a condition does not contain such a clause, the condition has a continuing effect in respect of the new Order (in this case the GPDO). This is due to Section 17(2) of the Interpretation Act 1978.
11. Case law² has also established that the words used in conditions should be given their natural and ordinary meaning. Condition 7 of the original permission

¹ R v Tunbridge Wells BC ex parte Blue Boys Developments Ltd [1990] 1 PLR 55; [1990] JPL 495 which held that a condition excluding the benefits of the 1972 Use Class Order has a continuing effect in respect of the new Order

² Dunnett Investments Ltd v SSCLG & East Dorset DC [2016] EWHC 534 (Admin), [2017] EWCA Civ 192; [2017] JPL 848; Lambeth LBC v SSCLG & Aberdeen Asset Management, Nottinghamshire CC & HHGL Ltd [2017] EWHC 2412 (Admin), [2018] EWCA Civ 844, [2019] UKSC 33; [2020] JPL 31; Trump International Golf Club Scotland Ltd & Another v the Scottish Ministers [2015] UKSC 74.

specifies that “planning permission” would be required for “any development of this land”. The meaning and intent of this condition is clearly to remove permitted development rights and require that any development to the dwellings secures express planning permission. This is explicit in the terms of the condition rather than being implied.

12. Therefore, even though condition 7 of the original permission relates to the GDO, I conclude that it still applies. Hence, dwellings constructed under the original permission, including 17 Oakdene Court, do not benefit from permitted development rights for the enlargement improvement or other alteration of a dwellinghouse. As a result, constructing an extension would be contrary to condition 7 of the original permission, so cannot be permitted by the GPDO Article 3, Schedule 2, Part 1, Class A. As such the proposed single storey rear extension is development for which express planning permission is required. That could only be granted on application to the local planning authority in the first instance. I have not been made aware of any such planning permission having been granted. Therefore, on the balance of probability, the appellant has not shown that the proposed single storey rear extension would be lawful.

Conclusion

13. For the reasons given above, I conclude that the Council’s decision to refuse to grant a certificate of lawful use or development in respect of a single storey rear extension was well founded and the appeal fails. I will exercise accordingly the powers transferred to me in section 193(3) of the 1990 Act as amended.

H Davies

INSPECTOR