



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 14 February 2024

Appeal Ref: APP/D1590/X/23/3324043

40 Queens Road, Leigh-on-Sea SS9 1BA

- 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 Victor Beadle against the decision of Southend-on-Sea Borough Council.
 - The application ref 23/00416/CLP, dated 27 March 2023, was refused by notice dated 22 May 2023.
 - 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 the application of external insulation to the side and rear elevations, finished in white cement render as per the existing finish.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The issues in this appeal require considering whether, as a matter of fact and degree, the proposed development would be lawful. There are no matters of planning merit to consider and the submitted documentary evidence allowed me to reach a conclusion on the issues in dispute. As such, it was not necessary for me to visit the appeal site. No party has been prejudiced by this course of action.

Main Issue

3. The main issue is whether the Council's decision was well founded. The burden to make out the case in LDC appeals rests with the appellant and the test of the evidence is the balance of probability.

Reasons

4. Under s192(1)9b) of the 1990 Act, if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question. I have taken the proposed operation to be that specified on the appeal form, which captures succinctly what is proposed.
5. For the purpose of the 1990 Act, operations are lawful at any time if 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). Having regard to the issues raised by the appeal parties, I shall consider whether the

proposed works would be development and, if they would be, whether they have planning permission granted by the Town and Country (General Permitted Development) Order 2015 (GPDO).

Development

6. S55(1) defines development as including the carrying out of building or other operations. S55(2) excludes from the definition of development the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building.
7. Based on evidence supplied by the Council, which has not been disputed, the additional layers to be added to the side and rear elevations of the house could have an overall thickness of 291mm. To my mind, this would have a noticeable visual increase to the width of the appeal property when seen from the road. It would unbalance the symmetry of the pair of semi-detached houses. Moreover, there is no information about how the new layer would be butted up to the eaves on the side of the house, which do not have a significant overhang and are more or less flush with the face of the side wall. Nor is there any information about the stepped junction that the new external layer would create on the rear elevation where it would meet next door. It seems to me that there would be very noticeable protruding effects at the junction with the eaves and on the rear wall boundary between the two houses.
8. In combination, these visual effects would materially affect the external appearance of the building. Consequently, the works would be development under s55 of the 1990 Act. With certain exceptions not relevant here, s57 of the 1990 Act specifies that planning permission is required for the carrying out of any development of land.

The GPDO

9. The GPDO grants planning permission for various developments within the curtilage of dwellinghouses, subject to certain conditions and limitations. Schedule 2, Part 1, Class A of the Order permits the enlargement, improvement or other alteration of a dwellinghouse. However, in the case of a dwellinghouse on Article 2(3) land (land in a designated Conservation Area) development is not permitted by Class A if it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles. In this case, the appeal property is in the designated Leigh Cliff Conservation Area (CA).
10. The side and rear walls would have individual boards/tiles of insulation affixed to them which would be finished with a topcoat of render. As a matter of fact and degree, the cladding with tiles of insulation would not be permitted development in a CA. It is also clear that the new rendering would be on top of an additional layer attached to the external wall and so it would be cladding by rendering, irrespective of the fact that the existing walls are already rendered.
11. The Leigh Cliff Conservation Area Article 4 Direction removes permitted development rights to render any brickwork which fronts the highway on houses in the CA. In this case the side and rear walls do not front a highway, so this does not apply. The Leigh Cliff Article 4 Direction has no material bearing on this appeal outcome. Also, the Article 4 Direction cannot remove permitted development rights that do not exist anyway.

Conclusion

12. 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 application of external insulation to the side and rear elevations, finished in white cement render as per the existing finish 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.

Gareth Symons

INSPECTOR