



Appeal Decision

Site visit made on 19 December 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2024

Appeal Ref: APP/M5450/X/23/3324193

62 Hutton Lane, Harrow HA3 6RD

- 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 Sanjay Perera against the decision of the Council of the London Borough of Harrow.
 - The application ref P/4387/22, dated 25 December 2022, was refused by notice dated 24 May 2023.
 - 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 outdoor canopy.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant describes the building works as 'retaining outdoor canopy' on their application form. Since the word 'retaining' does not describe an act of development, I have not included it in the banner heading above.

Main Issue

3. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

Reasons

4. An application under section 191(1)(b) of the Act¹ seeks to establish whether any operations which have been carried out in, on, over or under land are lawful. Section 191(2) sets out that 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. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development is lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to

¹ Town and Country Planning Act 1990 (as amended)

contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

6. Section 171B of the Act states where there has been a breach of planning control consisting in the carrying out without planning permission of building...operations...no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The main thrust of the appellant's case is that the canopy has been in place more than 4 years. This appeal will turn on whether the canopy was substantially completed at least 4 years before the date of the LDC application, namely by 25 December 2018.
7. During my visit, I saw that the canopy projects from a single storey rear extension. The appellant states that the 'rear extension' was built in 2016 and has provided a Building control certificate from STROMA. However, the certificate provided relates to an outbuilding, not the rear extension. Furthermore, the appellant advises on their application form that the building works (the canopy) were substantially completed on 1 September 2018. The appellant states the building control certificate for the rear extension was issued on 31 May 2016. It is therefore unlikely to relate to the canopy.
8. The appellant has provided a photograph taken from Rightmove, which is asserted to show the side wall of the canopy structure in October 2018. However, while the wall is visible in the photograph, the edge of the canopy structure, which projects slightly further towards the rear of the garden than the wall, is not visible. Had the canopy been substantially completed by the date of the photograph, I would expect to have been able to see the part of the canopy which projects beyond the wall in the photograph.
9. A letter from the occupant of 60 Hutton Lane, states the wall behind the house separating 60 and 62 Hutton Lane was completed before they moved into the property in December 2018. However, no mention is made of the canopy. This does not, therefore, support the appellant's case that the canopy was substantially completed by 25 December 2018.
10. Thus, for the reasons given above, the appellant has not shown, on the balance of probabilities, that the canopy was substantially completed by 25 December 2018 and the appeal must fail.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a canopy 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.

M Savage

INSPECTOR