



Appeal Decision

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th March 2024

Appeal Ref: APP/U5930/X/22/3312698

3 Finch Gardens, Chingford E4 9BP

- 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 (LDC).
 - The appeal is made by Mr Ali Ay against the decision of the Council of the London Borough of Waltham Forest.
 - The application ref 222836, dated 28 September 2022, was refused by notice dated 25 November 2022.
 - 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 the construction of a front porch.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Government's guidance 'Certificate of lawful use or development appeals: procedural guide' (2022) advises that a site visit will not be needed for every appeal, and it is for the Inspector to decide whether to conduct one. No site visit has been carried out in this case as sufficient information for me to determine the appeal has been provided by the main parties.
3. In any LDC appeal the appellant is required to provide evidence that is sufficiently precise and unambiguous to justify the grant of a certificate. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
4. Sections 191 and 192 of the Act explain that an LDC shall be granted where the proposed development is lawful if instituted at the time of the application, and that operations are lawful if no enforcement action may be taken in respect of them. The planning merits of the proposed development, such as its design and benefits, are not relevant to my consideration of whether it would be lawful.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

6. Section 57 of the Act sets out that planning permission is required for the carrying out of any development of land. Section 55 of the Act provides the meaning of 'development', which includes the carrying out of building

operations. Section 55 also confirms that 'building operations' includes additions to buildings. The proposed porch would therefore comprise development which requires planning permission.

7. Planning permission is granted for the erection or construction of a porch outside any external door of a dwellinghouse, subject to limitations, under the provisions of Article 3(1) and Class D, Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). It is not disputed that the proposed porch would accord with those limitations, and I see no reason to find otherwise. However, Article 3(4) of the GPDO states that it does not permit development contrary to any condition imposed by a planning permission.

8. It is not disputed that the appeal dwelling forms part of the development approved by planning permission reference 2000/0187. Condition 8 of that planning permission is as follows:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, there shall be no extensions to the houses including rooms in the roof with or without dormer windows without prior approval of the Local Planning Authority.

Reason: To prevent overdevelopment of the site and to retain adequate private amenity open space.

9. Even though the above condition does not refer to the GPDO in its current form, it remains clearly worded and effective in excluding the operation of the GPDO with regard to extensions to the appeal dwelling without prior approval from the Council. There is no prior approval from the Council for the proposed development. Therefore, notwithstanding the provisions of Article 3(1) and Class D, Part 1 of Schedule 2 of the GPDO, the proposed development would fail to comply with condition 8 of planning permission reference 2000/0187.
10. Section 171A of the Act clarifies that failing to comply with any condition or limitation subject to which planning permission has been granted constitutes a breach of planning control. Sections 172 and 187A of the Act provide the local planning authority with the power to take enforcement action where a condition attached to a planning permission has not been complied with, resulting in a breach of planning control.
11. In the absence of prior approval from the Council, it would be able to take enforcement action in respect of the proposed development had it been carried out at the time of the application. The proposed development would not have therefore been lawful and an LDC cannot be granted.

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 construction of a front porch was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

L Douglas

INSPECTOR