



Appeal Decision

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 03 April 2024

Appeal Ref: APP/U5930/X/22/3308716

The Garage, 1 Lyttelton Road, Leyton, London E10 5NQ

- 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 David Andrew against the decision of Waltham Forest London Borough Council.
 - The application ref 222127, dated 20 July 2022, was refused by notice dated 7 October 2022.
 - 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 Domestic extension work to 1a Lyttelton Road (also known as 'The Garage', 1 Lyttelton Rd) as shown in blue and red on drawing 'certificate of lawful development'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning Practice Guidance states an application needs to describe precisely what is being applied for and the land to which the application relates.
3. The address of the site is given as 1 The Garage Lyttelton Road (on the application form and decision notice), 1 Lyttelton Road (on the appeal form) and 1a Lyttelton Road (location plan). The property is an L-shaped dwelling that was created to the side and rear of the main two storey building. According to the appellant The Garage was converted to a single unit in 2003.
4. The description of the development, as stated in the application form, is set out in the bullet point above. When the appeal was made the description was amended to the construction of extensions at ground and first floor levels, repeating the description stated on the decision notice. The application plans show in red the extent of the built work to the side and rear of the main house for the lawful development certificate and in blue the floor area gain. The LDC application relates only to operational development, not an existing use.
5. The works identified on plan consists of several elements:
 - a. a glass block wall and a side wall, roof and two roof lights to form a porch at the front entrance to the dwelling,
 - b. a single storey ground floor infill extension with new external wall, roof and roof lantern,
 - c. a first floor infill extension with new external walls and roof, including a raised roof light,

- d. a rear single storey ground floor extension, with new wall, roof and four roof lights,
 - e. the installation of one roof lantern to existing roof, and
 - f. the installation of three raised rooflights towards the front and two raised rooflights to the rear of the unit.
6. The appellant has provided photographs of the extension work. There are no written details or specifications to describe the works or an explanation as to whether they comprise a single development or separate developments.

Main Issue

7. The issue is whether the decision by the local planning authority to refuse to issue a certificate is well founded.
8. Under s191(2) of the 1990 Act, 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.
9. The appellant accepts the extensions involve development and does not seek to argue that planning permission was not required. The appellant's case rests on immunity from enforcement action through the passage of time. In respect of operational development, no enforcement action may be taken after the end of a period of four years, beginning with the date on which the operations were substantially completed.
10. The relevant date for attaining lawfulness is the date of the application for the LDC. Therefore the onus is on the appellant to demonstrate on the balance of probability that the extensions were substantially completed by 20 July 2018.
11. In deciding when operations are substantially completed, case law has confirmed a holistic view should be taken of the development. Internal areas of work may be relevant and attention is not confined solely to external work to a façade or roof.
12. The planning merits of the extensions and roof works are not for consideration in determining lawfulness. No site visit was necessary in view of the main issue and relevant date.

Reasons

The extension works

13. The appellant submitted all extension work was completed between April 2017 and May 2018. To support this statement the appellant relies on a Google Earth satellite photo dated May 2018. Comparison is made with a Google Earth satellite photo dated August 2016 prior to the work and a Google Earth satellite dated May 2020 to show the same extensions as completed prior to May 2018.
14. The May 2018 photo is an aerial photo and therefore shows the site from above. Only the roofs are shown, not the side walls or any internal features. When compared to the 2016 photo the aerial image indicates works were

carried out to roofs but there is no detail of the elevations or interior. The aerial image in 2020 provides no additional information. As to other pieces of evidence submitted by the appellant, a Council tax bill dated 2 December 2015 is of no assistance in relation to the extension works. A set of photos of the extensions in August 2022, submitted as additional information for the LDC application, show the existing building forms but provide little assistance in establishing when the works were substantially completed.

15. The appellant's additional photos of the front facade dated 18 June 2018 indicate ongoing work and that the front porch area was not in a suitable state for safe access and use by residents. The appellant's description of the outstanding work at that time included "the sourcing, set out and erection of matching Victorian buff imperial London stock brickwork cladding, new and existing brickwork repointing, completion of flat roof waterproofing and rainwater disposal, supply cabling removal, management and redirection and landscaping entrance". As a matter of fact and degree the works were not substantially completed by mid June 2018.
16. Turning to the evidence derived from the Council, an officer visited the property when carrying out investigations and a photo dated 31 July 2019 shows building work on the porch and glass block wall. Access was gained inside the property on 7 August 2019 and photos indicate building work in progress by the entrance, in the areas by the side extension and the rear extension. The Council also refer to a time imagery review of the front elevation. A Google street view image dated to September 2020 indicates building work to the porch extension and glass block wall to the front elevation. A photo of the street elevation dated 5 March 2021 also shows the porch area boarded up. This evidence does not support the contention that the operations were substantially completed by 20 July 2018.
17. Having carefully considered all the evidence I conclude on the balance of probability the extensions were not substantially completed by the relevant date.

Enforcement notice

18. The Council issued an enforcement notice on 11 March 2021 against a front porch, ground floor infill extension in rear courtyard, a first floor extension to stable block, three raised rooflights and raised roof lantern. The notice was quashed on appeal in a decision dated 7 March 2022¹. The Inspector found significant inconsistencies and ambiguities within the notice in identifying and describing the works in question, taking account of the development on the ground. The Inspector concluded the notice did not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. Corrections would cause injustice and consequently the notice was invalid.
19. On this basis the appellant submitted there were no effective enforcement notices on the appeal site.
20. Neither the Council nor the appellant have considered the implications of S171B(4)(b) which allows for 'taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with

¹ APP/U5930/C/21/3273601

that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach'. However, because I have found the extensions are not lawful based on the date of the LDC application there is no need to explore this aspect further.

Conclusion

21. For the reasons given above the Council's refusal to grant an LDC in respect of construction of extensions at ground and first floor levels is well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Diane Lewis

INSPECTOR