



Appeal Decision

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal Ref: APP/U4610/X/23/3322417

146 Charter Avenue, Coventry CV4 8EB

- 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 Mark Roberts against the decision of Coventry City Council.
- The application ref PL/2023/0000546/LDCE, dated 15 March 2023, was refused by notice dated 18 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 a ground floor rear extension.

Summary Decision: The appeal is dismissed.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application seeks approval of a certificate of lawful use or development (LDC) for an existing ground floor rear extension. There is no dispute between the parties that the extension is of a size and scale that exceeds the limitations set out within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) for the enlargement, improvement or other alteration of a dwellinghouse¹.
3. Nor is it a point of dispute that an application for planning permission for the extension as built would have been required. Indeed, the appellant initially applied retrospectively for planning permission² for the extension but subsequently withdrew that application prior to the submission of the LDC application to which this appeal relates. Neither party has made any further case, nor presented me with any further evidence, that would lead me to doubt their conclusions regarding the provisions of the Order.
4. Both parties have indicated on their respective appeal forms that the extension is at the rear of the property and that it cannot be seen from publicly accessible vantage points. As such, the appeal forms indicate that it is considered essential that the Inspector visit the site to view the extension. However, the purpose of an LDC application for a scheme of this nature is to seek to demonstrate the lawfulness of an extension and, specifically in this instance, that it has been substantially complete for at least 4 years at the time of the application. Despite the indications of both parties regarding the need for a site visit, I am satisfied that a visit to the site is not necessary for the purposes of determining whether or not, at the point at which the LDC application was

¹ Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)

² LPA Ref No: PL/2023/0000031/HHA – withdrawn 15 March 2023

made, the extension in question had been substantially completed for a period of at least 4 years. I have determined the appeal accordingly.

5. The appellant's name as set out on the initial application form that I have been provided with had been redacted. I have therefore taken the appellant details from the appellant's appeal form and the Council's appeal questionnaire for the purposes of the banner heading, above.

Main Issue

6. The main issue is whether or not the Council's decision to refuse to grant a certificate of lawful use or development for a ground floor rear extension was well founded.

Reasons

7. The onus in an LDC application (and appeal) is on the appellant to demonstrate that, on the balance of probabilities, the use or development was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) and (b) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
8. Neither party has alerted me to the presence of an enforcement notice or any such requirements thereof and there is no dispute between the parties that the extension as built was of a size and scale that would have required planning permission. The main issue therefore is whether or not the extension is lawful, with particular regard to whether or not the period within which enforcement action against the building operations may be taken has expired. For operational development that was substantially complete prior to 25 April 2024³, the Act states⁴ that that period is four years beginning with the date on which the operations were substantially completed.
9. For the appellant's case to succeed therefore, in accordance with section 171B(1) of the Act, it would be necessary to show, on the balance of probability, that the extension was substantially completed by 15 March 2019 as that is the date four years prior to the submission of the appellant's LDC application.
10. Neither party have submitted particularly compelling evidence in support of their respective cases. I have not been provided by either party with a copy of the appellant's tenancy agreement referred to in the Council's delegated officer report which, the appellant contends⁵, documents the first tenants following the completion of the works. However, nor have I been provided with copies of the Council's aerial imagery to which they refer in their officer report and which the Council advise is from September 2019. This imagery, it is stated by the

³ Town and Country Planning Act 1990 as amended by Levelling-up and Regeneration Act 2023 (s115(1)(a)) and The Planning Act 2008(Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024 (Part 3(3)(b) and Part 3(5)(a))

⁴ Section 171B as amended – see footnote 3

⁵ As described at section H of the appellant's Appeal Form.

Council, does not clearly demonstrate the substantial completion of the development.

11. The application form positively indicates that the building works were significantly completed more than 4 years prior to the date of the application, the application being dated 15 March 2023. The Council's delegated officer report indicates that the appellant had stated that development commenced on 1 September 2018.
12. Whilst it has been held⁶ that if a Council has no evidence of its own to contradict or to otherwise make the appellant's version of events less than probable, then there is no good reason to dismiss the appeal, this is contingent upon the appellant's evidence itself being sufficiently precise and unambiguous. Thus, I am led to understand from the Council's delegated officer report that the appellant's tenancy agreement dated 13 March 2018 was for the occupation of the property by the first four tenants after the completion of the works.
13. However, the Council's delegated officer report also describes the appellant's statement that '*the development commenced works on 1 September 2018*'. The appellant's evidence, limited to that set out within the appeal form, does not attempt to substantiate dates, or rebut those dates offered by the Council. Thus, on the evidence it appears that the development commenced after it was stated that it had been completed and the property occupied. One date therefore casts doubt upon the other, and also upon the veracity of each.
14. What has been stated by the appellant and repeated by the Council is as limited as that of the Council's own evidence, and what I have before me in terms of dates of commencement of works and the purported first occupancy following completion of those works are contradictory. As such, they lack precision and are ambiguous. Notwithstanding the relative paucity of evidence from the Council, the appellant has not satisfactorily demonstrated, on the balance of probabilities, that the ground floor rear extension had been substantially complete for at least four years prior to the LDC application. The appeal must therefore fail.

Other Matters

15. I have noted the appellant's frustration at the level of support and advice provided to him by the Council during the application process. As an unrepresented applicant / appellant I have some sympathy with the appellant's stated experience. However, I am obliged to determine the matter before me on the basis of the evidence set out by the respective parties and I have determined the appeal accordingly. Those matters relating to the consistency of advice provided by the Council and a perceived lack of professional and technical support offered to an unrepresented appellant are for the Council and the appellant to resolve and do not fall within my remit for an appeal under section 195 of the Act.

⁶ *Gabbittas v SSE & Newham BC* [1985] JPL 630 and *Ravensdale Ltd v SSCLG* [2016] EWHC2374 (Admin)

Conclusion

16. 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 ground floor rear extension 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).

G Robbie

INSPECTOR