

Appeal Decision

Site visit made on 17 February 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 25th February 2025

Appeal ref: APP/T3725/X/23/3332822

10 Meadow Close, Lillington, Leamington Spa CV32 7AS

- The appeal is made under section 195 of the Town and Country Planning Act 1990, (the Act), as amended by the Planning and Compensation Act 1991 against the refusal by Warwick District Council to grant a certificate of lawful use or development.
- The appeal was made by Mrs Samiye Moustaffa.
- The application, reference W/21/1492, for a certificate of lawfulness was validated on 19 November 2021. It was refused on 23 May 2022.
- The application for a certificate of lawfulness was for the proposal to build 2 bedrooms and toilet in accordance with planning permission ref: W/80/0019 of 20 February 1980.

Summary of decision: The appeal is not allowed. A certificate of lawful use or development is not issued.

Costs application

1. The Appellant, Mrs Samiye Moustaffa, applied for an award of costs against Warwick District Council. That application is considered in a separate decision.

Appeal property

2. The appeal property, No. 10 Meadow Close, Lillington, is a detached house inside a bend of a residential cul-de-sac road. The application concerns an extension to the south western side elevation of the house, said by Mrs Moustaffa to have been lawfully constructed in accordance with planning permission W/80/0019 granted on 20 February 1980.

Application

3. This application for a lawful development certificate, (LDC), has been the subject of much delay and confusion. The delays in dealing with the application before the issue of the Council's decision are not matters I can deal with here. They are briefly considered in the Costs Decision referred to above.
4. The LDC application description has suffered several iterations. The original application dated 4 August 2021 described the development as: "ground floor extension with addition of a new garage and intention to fulfil the building as in W80/0019 plans granted and implemented". The Planning Inspectorate appeal form completed by Mrs Moustaffa dated 22 September 2023 described the development as "Proposition to build 2 bedrooms and toilet".
5. The final form that I am dealing with in this appeal is, in my view, accurately set out in of Warwick District Council's acknowledgment letter dated 25 November 2021, (as shown in 4th bullet point above). The letter asked: "If you consider that the above description does not accurately describe the development proposed please inform us as soon as possible.". I am not aware of any response.

6. Mrs Moustaffa asserted that planning permission W/80/0019 of 20 February 1980 for a 2 storey side extension to her home at No. 10 Meadow Close had been implemented by the building some years ago of what is now the ground floor side extension. She said that completion now of that permitted 2 storey side extension, whilst having been much delayed, would be lawful.
7. The Council said the single storey side extension built at No. 10, that Mrs Moustaffa claimed to have been the implementation of the W/80/0019 permission, was built and occupied some years ago. As it would appear the Council considered that the single storey extension, although to the same footprint as the 2 story planning permission extension, was materially different to that permitted in 1980, it meant the W/80/0019 permission had never been implemented. The Council said that permission had now lapsed and planning permission was needed to construct the 2 storey extension as originally proposed.
8. When work begins on a building project following the grant of a planning permission it can appear that the work is in implementation of the permission. For example, if, in the instance of a planning permission for a single storey house, incomplete footings, foundation and some wall construction works might be as shown on the permission plans. But the addition of a second floor would show that as works progressed it becomes clear that something materially different to the development permitted is actually under construction. If such a situation emerges, the correct conclusion must be that the development permitted had not, in fact, commenced. In that case, the planning permission would not have been implemented. The permission for the single storey dwelling could subsequently lapse through the passage of time. It would then be incapable of lawful implementation.
9. I consider that to have been the situation here. The present single storey extension at No. 10 would have been substantially completed by the constructing of the roof and making it fit for occupation and residential use. That materially different single storey extension to the 2 storey 20 February 1980 W/80/0019 planning permission extension has apparently been occupied for some years. The single-story extension was not the partial and unfinished W/80/0019 permission extension. Whether it has become lawful by virtue of the passage of time or was development permitted by the General Permitted Development Order is not a matter before me. I note, however, that the Council Planning Officer said in his report that the single storey side extension and attached garage does not have planning permission and is considered to be unlawful.

FORMAL DECISION

10. For the reasons given above, I conclude that the Council's refusal to grant a lawful development certificate for the proposal to build 2 bedrooms and toilet at No. 10 Meadow Close, Lillington, Leamington Spa CV32 7AS in accordance with planning permission W/80/0019 of 20 February 1980 was well founded and that the appeal should fail. I exercise accordingly the powers transferred to me by s.195(3) of the Act, (as amended).

John Whalley

INSPECTOR