Planning Inspectorate

Appeal Decision

Site visit made on 4 March 2025

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 March 2025

Appeal Ref: APP/W4705/X/24/3350150
16 Cliffe Lane West, Baildon, Shipley BD17 5QL

- 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 Mrs Monika Cieslak against the decision of City of Bradford Metropolitan District Council.
- The application ref 24/01598/CLE, dated 30 April 2024, was refused by notice dated 9 August 2024.
- 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 construction of patio and lean-to pergola at rear of property.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The time when enforcement action can be taken was increased from 4 years to 10 years by the Levelling-up and Regeneration Act 2023. The new 10-year period came into effect on 25 April 2024. However, operational development that was substantially complete before the 25 April 2024 continues to be subject to the 4-year period, by virtue of r5 of the Planning Act 2008 (Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024/452.

3. In this type of appeal, my decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The planning merits of the development are not relevant.

Reasons

4. The **main issue** is whether the Council's refusal to grant an LDC was well founded. It is for the appellant to show, on the balance of probability, that the development constituted permitted development at the time it was begun or that the time for taking enforcement action had passed.

5. The relevant time for taking enforcement action is 4 years from the date the patio and lean-to pergola were substantially complete. The 4 years is calculated from the date of the application. The material date is therefore 30 April 2020 and development substantially complete on or before that date would be immune from enforcement.

6. It is declared on the application form that the development was substantially complete on 15 November 2021, which is after the material date. The development

has not therefore become immune from enforcement action due to the passage of time.

7. The patio and lean-to pergola fall within the definition of development set out in s55 of the Town and Country Planning Act 1990. I have not been advised of any express planning permission being granted for the development.

8. The application form declares that the patio is *'currently 58 cm above ground level'*. Furthermore, the plans accompanying the appeal show that the ground level slopes down away from the dwellinghouse, and that the patio has been constructed with a level surface. While the patio is shown being 20 cm above ground level adjoining the dwellinghouse, at its outer edge it is shown as 37.5 cm above ground level. While measurements were not taken during my site visit, I saw that the ground level slopes down away from the dwellinghouse, and that the patio has a level surface. Regardless of whether figures are utilised to show the height of the patio, it clearly stands above the ground and is consequently a raised platform.

9. Class A.1(k)(i), Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') confirms that the extension or alteration of a dwellinghouse is not permitted if it consists of the construction of a raised platform. The patio is a raised platform, and it did not constitute development benefitting from deemed planning permission by virtue of Class A, Part 1 and Article 3 of Schedule 2 of the GPDO at the time it was constructed. The patio is therefore unlawful.

10. While the lean-to pergola may fall within the conditions and limitations of Class A.1, it has been constructed on the patio, which I have found to be unlawful. Article 3(5) of the GPDO confirms that the benefits of Schedule 2 cannot be applied where the building, or part thereof, is unlawful. As the patio is part of the building and is unlawful, the lean-to pergola cannot therefore benefit from permitted development rights.

11. For these reasons the appellant has failed to show, on the balance of probability, that the construction of patio and lean-to pergola were not immune from enforcement action or that they benefitted from planning permission.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for construction of patio and lean-to pergola at rear of property is 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 Madge

INSPECTOR