



Appeal Decision

Site visit made on 1 April 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2025

Appeal Ref: APP/L5240/X/23/3333107

Workshop rear of 1-3 Mayfield Crescent, Mayfield Road, Thornton Heath, Croydon CR7 6DH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development ('LDC').
 - The appeal is made by Mr Thomas Kane against the decision of the Council of the London Borough of Croydon.
 - The application Ref 23/02863/LE, dated 24 July 2023, was refused by notice dated 18 September 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 described as '*Demonstration of commencement of development in accordance with condition 8 (Time Limit) of planning permission ref 18/00253/FUL for demolition of garage, erection of 2-bed detached dwelling and associated works.*'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The workshop/garage mentioned in the description of the development has been demolished and the land is now fenced off, and is an enclosed piece of land which abuts the back-edge of the Mayfield Road footway.
3. On 14 May 2018 planning permission (ref 18/00253/FUL) was granted for the redevelopment of the land involving the erection of a two-bed dwelling.
4. Although the application now at appeal makes specific reference to condition 8 imposed on the said permission - which is the standard time limitation condition requiring that the development is begun within three years ie before 14 May 2021 - the Council, in accepting that sufficient evidence had been adduced to show that the garage had been demolished by the said date, effectively accepted that the development had commenced.
5. Nonetheless, the Council based its decision on the failure to comply with the requirements of condition 4 imposed, which stipulates that full details of the proposed landscaping works be submitted for written approval prior to development taking place.
6. In view of this the Council refused to issue the LDC applied for.

The legal context

7. In an appeal under s195 of the 1990 Act, as amended, against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence would need to show that those works carried out constituted operations necessary to amount to the commencement of the approved extension to the clubhouse, and that these commenced within the time limitation period.
8. The onus of proof is on the appellant to demonstrate, on the balance of probability, that commencement occurred, as required, thereby confirming that the planning position is as claimed. Accordingly, the key is that the evidence should be precise and unambiguous to this end.
9. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on the evidential facts, planning legislation and relevant case law.
10. S191(2) says that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
11. Section 56(1) says that, for the purposes of the Act development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations are begun. S56(2) goes on to say that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.
12. As demolition is considered a material operation under the 1990 Act, as amended, I agree with the Council's approach.

Main Issue

13. The main issue in this appeal is whether, on the balance of probability, the development had been implemented and lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990, as amended, and whether the Council's refusal to issue a LDC was well-founded.

Reasons

14. The issue of contention between the main two parties is whether condition 4 can be considered as a 'condition precedent'; in other words, one which specifies that something has to happen before the development can properly proceed, thereby controlling the entire development.
15. Condition 4 is worded '*No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. Such details shall include existing planting to be retained, species and size of proposed new planting, hard landscaping materials (to incorporate SuDS where appropriate), and all boundary treatment within and around the development...*'
16. The courts have held that a condition will only be a condition precedent where it expressly prohibits the commencement of development and goes to the heart of the planning permission. The appellant is of the view that the approved

development did not, and could not, retain any existing planting. There were no flora species within the site – it was occupied by a garage building - and although an arboriculturalist's report, submitted alongside the planning application referred to three trees, these were all positioned outside the site's boundaries. I would suggest that condition 4 is a standard worded condition and, although it should be tailored to the development at issue, there are other elements which hold significance for the appeal development.

17. To illustrate this, a small front garden and a hard-surfaced driveway proposed to the front of the house, along with boundary treatment for which approved drawing no DUFF-01-102A contains annotations including 'hedge/timber fence', 'permeable paving blocks' and '1.8m high metal railings and/or 0.6m high timber fence within visibility splay.'
18. The development itself involves the erection of a contemporary style dwelling, at odds with the surrounding architectural vernacular and to this end I attach importance to the need for appropriate and complementary hard and soft landscaping to be included within the development, not least to provide some certainty. Accordingly, I am satisfied that the submission of such details for written approval prior to the commencement of the development and in accordance with the condition's requirements is necessary and reasonable in the circumstances.
19. Moreover, I find that it goes to the heart of the planning permission. It is part and parcel of ensuring that the approved dwelling can be built as approved, in the correct position and to allow for a visually acceptable development.
20. Condition 4 is therefore a condition precedent, and the evidence is that when the former garage was demolished – the stated material operation – the said condition was breached.

Conclusion

21. For the reasons given above I find that the evidence demonstrates that when the stated operation took place a condition precedent was breached. Consequently, I conclude that planning permission 18/00253/FUL has not been lawfully commenced.
22. Accordingly, for the reasons given above I conclude that the Council's decision was well-founded.
23. I will, therefore, exercise my powers under section 195(3) of the Act.

Timothy C King

INSPECTOR