



Appeal Decision

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2025

Appeal Ref: APP/M1520/X/24/3344520

Bonnyview, Thirlmere Road, Thundersley, Benfleet, Essex SS7 3JS

- 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 Steven Ripo against the decision of Castle Point Borough Council (the Local Planning Authority, LPA).
 - The application ref 23/0413/CLE, dated 24 August 2023, was refused by notice dated 20 November 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (the Act, as amended).
 - The development for which a certificate of lawful use or development is sought is that the dwelling was rebuilt (not extended) in the 1990s.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The outcome of the appeal turns on considering relevant aspects of planning legislation including evidence provided of the alleged development and not on assessing matters of planning merit that would normally require a visual site inspection of the premises. I have therefore been able to determine the appeal without a site visit. Neither side has been prejudiced by this course of action.

Main Issue

3. The main issue, as usual in LDC appeals, is whether the Council's decision to refuse a LDC is well-founded.
4. S171B of the Act sets the time limits or immunity periods for enforcement action and therefore lawful development. Although the immunity period is now 10 years¹, the transitional arrangements confirm that for unauthorised works of operational development it remains at 4 years where such works were completed before 25 April 2024, which is the allegation here.
5. LDC applications and appeals are determined on the balance of probability and the onus is firmly on the appellant to establish the lawfulness of the development. If the LPA has nothing to contradict the appellant's submissions or otherwise make his version of events less than probable, it should grant the LDC provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability.

¹ As introduced by the Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024

Reasons

6. Planning permission was granted on 28 November 1989 for a single storey, hipped roofed side extension and re-roofing of the existing bungalow (LPA Ref CPT/1340/89). However, the appellant claims that this permission was not implemented and that the works which occurred in 1990 amounted to a rebuilding of the entire detached bungalow, which is situated on the north side of Thirlmere Road just west of its junction with Borrowdale Road.
7. The appellant has submitted two surveyors' Reports: the first by Mr Ansell FRICS of Hair & Son LLP dated 24 April 2023 accompanying the initial application and the second by Mr Newman BSc (Hons) Eng of Marks Heeley Ltd dated 23 April 2024 appended to the appellant's appeal statement.
8. These Reports both confirm that much if not most of the current fabric of the bungalow appears to have been constructed post 1990. However, paragraph 4.8 and Appendix C to the 2024 Report makes clear that parts of the original dwelling (the areas indicated in blue), including the flank sub-wall, original walls and ceiling joists above the front two bedrooms, are retained in the current building's structure.
9. Moreover, and as the Council point out, it is unsurprising that much of the building was constructed in the 1990s, given the above 1989 permission. I have not been provided with the approved drawings for that permission (possibly because they are now unavailable), but the description of development indicates that the works were extensive and included re-building the bungalow's pitched roof.
10. It is unclear whether the flat roofed rear extension existed at the time of the works in 1990, although the 2023 Report suggests that it probably did (Section 1 of the Report). It therefore appears to me, as per the key plan in Appendix C of the 2024 Report, that much of the current structure, including the external structural walls of this flat-roofed rear extension, pre-dated the works to the bungalow in the early 1990s.
11. The appellant argues that the lack of a further Building Regulations application – further to the one submitted in respect of the extension works the subject of the 1989 planning permission – and lack of engagement with the Council's Building Regs Team following the two initial on-site inspections by the Council's building surveyors, points to a rebuild of the whole property.
12. I disagree. There is no requirement for an applicant to request a completion certificate. The then owner of the property made a Building Regs application in February 1990 that reflected the 1989 planning permission (which was approved on 12 April 1990). The Council's building surveyors attended a commencement inspection on 17 April and a damp proof membrane/damp proof course inspection on 25 May 1990. Given that an initial Building Regs application and inspections were made that reflected the planning permission, it would, on the contrary, seem unlikely that the scale of the works dramatically increased to encompass the wholesale rebuilding of the bungalow.
13. For all the above reasons it would appear that planning permission CPT/1340/89 was implemented, even if some additional works were in fact carried out. It appears, on the balance of probability in terms of the evidence presented to me, that the bungalow was not therefore rebuilt but merely extensively extended as per

this permission. In any case, the onus is on the appellant to demonstrate that the dwelling was rebuilt, which he has not done.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the rebuilding of the bungalow, rather than just its significant extension, 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).

Nick Fagan

INSPECTOR