



Appeal Decision

Site visit made on 18 August 2026

by **Peter Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 September 2026

Appeal Ref: APP/L5240/X/25/3362537

38-40 Chipstead Valley Road, Coulsdon CR5 2RA

- 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 Zahoor Ahmed against the decision of the Council of the London Borough of Croydon.
 - The application ref 24/02537/LE, dated 22 July 2024, was refused by notice dated 18 September 2024.
 - The application was made under section 191(1) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is alterations and use of rear of ground floor as 2 studio flats with associated landscaping and bin stores.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue an LDC was well founded. This turns on:
 - i) Whether planning permission ref 17/04486/FUL was compatible with the first floor extension to the property, such that it remained valid and capable of lawful implementation; and
 - ii) If the planning permission was capable of lawful implementation, whether it commenced within 3 years of the grant of planning permission.

Reasons

General approach to LDCs

3. Advice relating to LDCs is provided by the Government's *Planning Practice Guidance* (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits are not relevant.

Background

4. The appeal concerns a mid-terraced property situated within a parade of shops. It has been substantially extended at the rear at ground and first floor levels and the appeal concerns this rear part of the building, which contains flats.
5. The planning history includes planning permission 17/04486/FUL, which was granted on 3 November 2017, for 'Alterations and use of rear ground floor as 2 studio flats with associated landscaping and bin stores'. The appellant relies on this planning permission for the claim that the ground floor flats are lawful. A 'Final Certificate' for a development described as 'Creation of 2 studio flats with internal structure alterations' was issued by Stroma Building Control on 21 January 2022, although the appellant says that the development was actually completed on 6 January 2022, a claim I have no reason to doubt.
6. Two planning permissions have been granted for first floor extensions. Planning permission 17/03030/FUL was for the erection of a first floor rear extension and was granted on 4 August 2017, before permission was granted for the ground floor scheme. Planning permission 17/05916/FUL was for the erection of a first floor rear extension and conversion to 2 studio flats and was granted on 6 April 2018, and so was after the approval of the ground floor scheme.
7. The appellant advises that work on the first floor scheme commenced in February 2020 and that it was completed by April 2020. An aerial image from April 2020 shows the first floor structure in place and a visit by a Council officer in August 2020 confirms that the first floor had been constructed by then. While the question of precisely when work on the ground floor scheme was started is disputed, it is clear that it was after the first floor extension was constructed.

Whether the development is incompatible with the first floor extension

8. The dispute in this case concerns the question of whether the first floor extension rendered the ground floor scheme incapable of lawful implementation. The correct approach to considering the interaction of multiple planning permissions on a single site is addressed in the case of *Pilkington v SSE* [1973] 26 P&CR 508. In that case, the High Court held that the implementation of a planning permission in accordance with its terms and conditions had made it impossible to implement an earlier planning permission in accordance with its terms and conditions, because the permissions were inconsistent. That case concerned planning permissions for building bungalows, but the general approach is relevant to the appeal before me. The Court considered the planning permissions as a whole, including the setting of the proposed bungalows; it was not just a question of whether all 3 bungalows could be physically accommodated on the site.
9. In this current appeal, the planning permission for the ground floor flats includes elevations and a floorplan. There are differences between these plans and the development that has actually been built. I inspected one of the flats internally, and saw that the internal layout was not as shown on the plans. Moreover, the approved plans show the rear element of the building, where the flats are located, as a single storey structure. The plans also show the rear elevation of the building stopping some distance short of the alleyway to the rear of the property, with an open area retained for cycle and bin storage. There are windows and doorways serving the flats on the rear elevation. Condition 1 of the planning permission

requires the development to be built in accordance with the approved plans and Condition 3 requires the bicycle and bin storage areas to be provided.

10. There have been two separate planning permissions to add a first floor extension to the rear of this building and there is some debate between the parties about which (if either) has actually been implemented. However, the point is moot because the actual effect of the development can be seen on the ground. Thus, regardless of which permission has been implemented, my assessment below would be the same.
11. The relevant part of this building is now a 2-storey structure. That is plainly different from the plans approved for the ground floor flats, which shows a single storey structure. It would not be right to suggest that any difference at all in the elevations necessarily means that the ground floor scheme could not be implemented. However, in this instance the upper floor materially affects the ground floor flats. The flats rely heavily on the rear-facing windows for lighting. Indeed, they are the only windows serving the flats as built. Yet the development now overhangs and encloses the rear of the ground floor of the building. Consequently, what is shown as the rear elevation on the drawings that were approved for the ground floor flats is now an internal wall.
12. There are large, unglazed openings in the new rear elevation, but the fact is that the windows to the flats now face onto an enclosed rear area rather than the outdoor area indicated by the approved drawings. That is a significant change that will affect the outlook and lighting achieved by those windows. It also means that there is no external space serving the flats. It is not for me to judge the merits of the ground floor flats in this changed form, but the changes are significant enough that it could have led the Council to take a different view on the planning balance.
13. The appellant suggests that the Council should have taken account of the existing planning permission for a first floor extension in deciding whether to grant permission for the ground floor flats. However, the Council could not simply assume that the first floor scheme would go ahead and was obliged to consider the site as it existed at the time of the application. The appellant was entitled to make multiple planning applications but was responsible for deciding which permissions to implement, taking account of any incompatibility between the schemes. It was also open to the appellant to prepare a comprehensive scheme for the building, in order to avoid any incompatibility issues.
14. Moreover, I cannot see anything in the planning permissions to show that they were intended to be implemented together. On the contrary, the scheme for ground floor flats shows no first floor development at the rear of the property, while the ground floor flats are not shown in the schemes for the first floor. The Council was entitled to have regard to those drawings in deciding what was actually proposed.
15. It may be that the Council could have imposed planning conditions to prevent incompatible schemes from being built, but the fact that it did not do so does not make the development carried out by the appellant, which is materially different from the approved scheme, lawful. The appellant says that the flats are separate planning units, but that does not alter my view that the ground floor planning permission was incompatible with the first floor development that has been carried out.

16. For these reasons, I conclude that the permitted scheme for the ground floor flats was not capable of implementation at the point when the development was carried out because it was incompatible with the first floor extension.

Whether the development was carried out within 3 years of the grant of planning permission

17. My conclusion above means that, irrespective of precisely when the ground floor was converted, the development did not amount to the implementation of the permitted scheme. Nevertheless, the Council also raises the question of the timing of the development, and I consider that here.
18. Planning permission 17/04486/FUL was granted on 3 November 2017. The development was required by Condition 4 to begin within 3 years. Thus, the permission would expire if the development was not started by 3 November 2020. The appellant says that it was implemented on 3 October 2020. I take it that the appellant means by this that the development commenced on that date, since the development is said to not actually have been completed until 6 January 2022.
19. The appellant has provided an Initial Notice from Stroma Building Control dated 3 October 2020, a 'Regulation 17' extension of time request from 24 December 2021 and a Final Certificate dated 21 January 2022, but none of these documents show when the development was begun.
20. The appellant states that, following the submission of a building control notice on 3 October 2020 'the applicants immediately implemented the works'. However, it is not clear from this statement when the development was begun. There is no discussion about any particular works which were carried out at the start of the project or their timing. The word 'immediately' is not sufficiently precise to enable me to judge whether or not a material commencement was made by 3 November 2020.
21. Overall, there is insufficient information to show what, if anything, had been carried out by 3 November 2020. Accordingly, it has not been demonstrated, on the balance of probability, that the development had begun by that date. But regardless of that, as I have already indicated, the permitted scheme could not be lawfully implemented at any time after the first floor extension was added.

Conclusion

22. For the reasons given above, I conclude that the Council's refusal 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) and dismiss the appeal.

Peter Willows

INSPECTOR