



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14th JULY 2023

Appeal Ref: APP/V2255/X/22/3300931

22 East Street, SITTINGBOURNE, ME10 4RT

- 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 Trevor Ranger against the decision of Swale Borough Council.
 - The application ref 21/506105, dated 8 December 2021, was refused by notice dated 6 May 2022.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is C3 – Dwellinghouses, building works in contraventions of planning permission.
-

Decision

1. The appeal is dismissed.

Planning history

2. The most relevant elements of the history of the site for the purposes of this appeal are:
 - 14/504983/FUL, grant of permission dated 22 June 2015 for change of use to form 3 no. additional self contained flats. Demolition of rear two storey projection together with all the single storey extensions and outbuilding. Proposed single storey rear extension, external staircase and rear dormer ('the 2015 Permission');
 - 17/504907/FULL, refusal of Minor Material Amendment ('the MMA') to Condition 2 of 14/504983/FULL dated 24 November 2017. The reason for refusal was that the dormer window, by virtue of its increased depth and height, and its use of white cladding rather than matching hanging tile, is substantially different to that originally approved and does not constitute a minor material amendment to planning permission 14/504983/FULL.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant the LDC was well-founded.
4. The description of the development in the application form is identified in paragraph 4 as being "an existing use, building work or activity in breach of a condition" and refers to "C3 – Dwellinghouses". Paragraph 5 goes on to describe the development as "Building works in contravention of planning permission". Paragraph 6 states that the building works were substantially completed and the use as a single dwellinghouse began more than four years before the date of the application, and also states that the LDC is sought for a

Appeal Decision APP/V2255/X/22/3300931

use, operation or activity in breach of a condition and provides the planning permission reference number of 14/500983 , condition number 2 (which is presumably a typological error and should refer to 14/504983 as the 2015 Permission).

5. Taking the application form as a whole, it is quite clear that the applicant was wishing to ascertain whether the failure to comply with the 2015 Permission, condition 2 ('Condition 2') is lawful pursuant to section 191(1)(c) of the 1990 Act.
6. In the decision notice, the Council described the proposal as "Lawful Development Certificate (Existing) for building works not in accordance with approved plans attached to planning permission 14/504983/FULL". The ground for refusal was that there had been a breach of Condition 2 and that as such the relevant time limit under section 171B(3) of the 1990 Act was 10 years beginning with the date of breach which had not yet expired.
7. The appeal form describes "building works in contravention of the planning permission" with actual use of the site at the time of the application identified as 4 self-contained flats. However, the appellant argues that the development was substantially complete in August 2017 and that as the works were not completed in accordance with the approved drawings the development as a whole is unauthorised and does not have the benefit of planning permission. On this basis the appellant argues that there has been a breach of planning control for a period more than four years and that enforcement action may therefore not be taken.
8. It is necessary to first consider whether the 2015 permission was implemented. The parties agree that the only element of the 2015 permission that is different in the as built development is the rear dormer. The change of use and creation of 3 additional self-contained flats pursuant to the 2015 Permission was implemented as was the demolition of the previous extensions and provision of new external staircase. This change of use and the associated works were undertaken pursuant to the grant of the 2015 Permission which was therefore implemented.
9. This is further supported by the fact that when submitting the MMA application, the appellant considered and treated this dormer as being part of the original permission, and indeed at that time was arguing that it was not substantially different in the context of the overall development to that which had originally been granted permission.
10. As the 2015 Permission is for the material change of use of the building with the associated operational development, and there is nothing before me to suggest otherwise, I find the works to construct the dormer were part of the overall operations to implement the development authorised by the 2015 Permission. As the 2015 Permission was implemented, and as the unauthorised operations are as a matter of fact and degree part of the overall development authorised by that permission, they are covered by Condition 2. The Council could therefore have taken enforcement action on the date of the LDC application under section 171B (3) of the 1990 Act as the appellant does not contend that the works were substantially completed more than 10 years earlier.

Appeal Decision APP/V2255/X/22/3300931

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of building works in contravention of planning permission was 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.

Zoë Franks

INSPECTOR