



Appeal Decisions

by **Katie Peerless DipArch RIBA**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 October 2018

Appeal Ref: APP/G5180/X/17/3191181
92 Ridgeway Drive, Bromley, BR1 5DD

- 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 Haran Thurai against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/17/04691/PLUD, dated 9 October 2017, was refused by notice dated 6 December 2017.
 - The application was made under section 192(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 the construction of a car parking space to the front of the garden area.
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Decision

1. The appeal is dismissed.

Main Issue

2. I consider the main issue in this case is whether the Council's decision to refuse the application for a LDC was well-founded.

Reasons

3. The Council says the development proposed would constitute engineering works that would go beyond what is permitted by Schedule 2, Part 2, class B of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) which allows for *'the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).'* Class A is the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.
4. The representations I have from the appellant, in a letter to the Planning Inspectorate dated 29 June 2018 and on the appeal form, appear to agree that the works would not amount to permitted development as it would be an engineering operation within the curtilage of a dwellinghouse, although he also makes reference to s.55 of the Town and Country Planning Act 1990 (TCPA). However, he states that he was advised by the Council to use the permitted development route to obtain planning permission.

5. If the appellant is dissatisfied with the advice given by the Council, which was, apparently, to apply for a LDC, the appeal process is not the route through which this can be addressed. An appeal against the refusal to grant a LDC must demonstrate that the Council was incorrect to refuse the application by citing the reasons why the proposed development is considered to be permitted development or does not need planning permission.
6. The appellant has provided no details of any correspondence with the Council on this matter, or details of any visits made to the site by a Council Officer prior to his application. It would not seem unreasonable to me that a Council Officer might give verbal advice, without having seen the site, that an LDC application would be a route to explore in the first instance. The purpose of an LDC application for a proposed development is to give the applicant surety about what works would, or would not, need to be the subject of a full planning application.
7. I am unsure what is meant by the appellant's statement that the works would not be classified as 'Permitted' (sic) development under s.55 of the TCPA. The TCPA does not define permitted development – this is found in the GPDO. I am assuming that this is misunderstanding on the part of the appellant. Nevertheless, the proposals do amount to development for which planning permission is required as defined in s.55.
8. However, although some development is granted planning permission through the provisions of the GPDO without the need for a specific planning application, I consider that there is no class of the GPDO under which could authorise the issue of a LDC for the proposed works. As noted above, the construction of a means of access to certain types of highway is permitted development, but what is proposed here goes well beyond just providing a new access. It would involve a considerable amount of excavation and the subsequent building of retaining walls around the excavated area.
9. Schedule 1, Part 2, class F of the GPDO allows for the provision of hard surfacing within the curtilage of a dwellinghouse, subject to conditions, and class A of Schedule 2 allows for the erection of walls provided they do not exceed 1m in height where adjacent to a highway. Notwithstanding this, I consider that the amount of earth that would need to be removed, combined with the other works, would constitute an engineering operation within the curtilage of dwelling house, for which there are no permitted development rights in the GPDO.

Conclusions

10. Taking all of the above into account, I consider that it has not been demonstrated that there are any permitted development rights granted by the GPDO that would authorise this development as a whole. An application for planning permission for the work is consequently required to authorise it.
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 the proposed construction of a car parking space to the front of the garden area 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.

Katie Peerless

Inspector