
Appeal Decision

Site visit made on 30 October 2013

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 14 November 2013

Appeal Ref: APP/X5210/X/13/2197739

Flat 2 Norbiton House, Camden Street, London NW1 0LD

- 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 John Amobi against the decision of the London Borough of Camden.
 - The application Ref 2012/6508/P dated 3 December 2012 was refused by notice dated 28 January 2013.
 - 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 a Conservatory to a ground floor flat.
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Decision

1. The appeal is dismissed.

Reasons

2. An appeal relating to a Certificate of Lawful Use or development (LDC) is confined to the narrow remit of reviewing the local planning authority's reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered. The question to be asked is whether or not an appellant has shown, on the balance of probability, that the development to which the application refers commenced 4 years before the date of the application.
3. The application was made on 3 December 2012 and so, in this case the period commences on 3 December 2008 and is referred to as 'the relevant date'. The burden of proof is firmly on the applicant and an LPA must be supplied with sufficient information to satisfy them that the proposed operational development is lawful.
4. The application site is a ground floor flat to the rear of Norbiton House in Camden Street, Camden. There is a small rear garden/yard, as for the adjacent flats, and these are enclosed by brick walls. The conservatory which is the subject of the application basically infills part of what would have been the rest of the garden or yard. Norbiton House is not a listed building and it is not in a Conservation Area.
5. From the submitted application information I have no reason to doubt that, around 1996 and 1997, there was a conservatory type structure in place to the rear of the flat. I do not question the solemn declarations; the tenancy agreement; the cleaner's statement and the maintenance company estimate.
6. However, on behalf of the appellant it is confirmed that in 2010 the old conservatory structure was removed and replaced with a new conservatory. From my site inspection and the submissions it is evident that the new conservatory was not an exact re-building of what was previously in place. The new works are described as being a refurbishment of the previous structure but I consider that it was more than

just a like for like replacement. In my view the application conservatory must have been distinctly different in character, appearance and construction details than the earlier structure which covered the garden/yard.

7. The evidence indicates that these differences were significant. For example, there were marks on the rear wall (which were pointed out to me during the site visit) which indicated that the 1996/97 structure had been fixed at a lower level. In addition to this I noted that the new conservatory roof overlapped the soldier course of coping bricks to the rear wall and that the clerestory windows also sat on top of the wall. I accept that the aerial photograph is not conclusive as to whether or not the rear garden/yard had been covered over and the planting shown could have been sitting on top of the roof covering. However, the top of the wall is distinctly noticeable from the photograph and indicates that whatever was on site at that time was not the new conservatory which was in place at the time of the application on 3 December 2012.

8. If the former structure had been simply replaced 'like for like' it could have been classed as a refurbishment. However, from all of the submissions it is my view that, on the balance of probability, a different and new conservatory was built. This started a new chapter in the planning history of the site and the new conservatory, on the admission of the appellant, was erected in 2010. It follows that the new conservatory could not have been lawful on the date the application was made.

9. I conclude, therefore, that the planning authority's decision not to grant a lawful development certificate for the new conservatory was sound and the appeal fails. In reaching my decision I have taken all other matters raised on behalf of the appellant into account. These include all of the matters set out in the application; the grounds of appeal; the various declarations and all other documents submitted. However, none carries sufficient weight to alter my conclusion that the application structure is unlawful and nor is any other factor of such significance so as to change my decision that the appeal should fail.

Anthony J Wharton

Inspector