
Application number: 2025/0870

Description: Certificate of lawfulness for the existing building.

Location: 32A Barnsley Road, Brierley, Barnsley, S72 9LD

Site Location & Description

The development site comprises a detached building which sits within a row of semi-detached and terraced houses on the outskirts of Brierley, along the main road through the area. The plot is thin and narrow, measuring approx. 7m wide and projecting approx. 56m back from the highway and backs on to an open area of Green Belt land. The area is characterised by semi-detached and terraced dwellings on the northwest side of Barnsley Road and larger detached and semi-detached dwellings on the opposite side.

Proposed Development

The applicant is looking to legalise their property which had previously been granted planning permission in 2017/0376. The applicant has made a number of material differences which are different to the approved plans. The approved plans show a detached building which is 5m x 11.51m with a 3.34 m single storey projection. The submitted drawings show the building as 4.92m x 11.67m with a 2.5m single storey projection.

The approved plans show the height to the eaves to be 6.94m. The building as built has a height to eaves of 6.37m (0.57m difference). The approved plans show the height to the ridge to be 11m. The building as built is 10.27m (0.73m difference)

All four elevations are different to the approved drawings. The differences include relocation of the front door to the side, the garage door is not level with the adjacent opening, changes to the position, size and number of windows and alteration to the position of the rear dormer.

In particular, the front elevation which is visible from the street scene has a material number of differences. These differences include the front door being replaced by a window and the first-floor window is set several courses lower than the eaves.

The applicant has removed the raised terraced element of the application due to advice taken by the Council's legal team.

Policy Context

Section 191B of the TCPA 1990 states

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation

subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

4.2 Section 171B of the TCPA states:

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of—
 - (a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed

The 10-year rule is subject to a transitional period. The transitional provisions confirm that operational development is subject to the four-year rule, provided that the operational development was substantially completed before 25th April 2024.

Consultations

Legal – The works were substantially completed before the 25th April 2024 and therefore benefit from the transitional 4- year rule. The evidence shows that the building was completed in 2021 and has therefore been complete for over 4 years and is now immune from enforcement action.

Representations

No letters were received from members of the public.

Relevant History

2017/0376 – Erection of 1 no. detached dwelling with integral garage – Approved with conditions.

Assessment

The applicant has applied for a certificate of lawfulness to legalise the building that was erected and completed in 2021.

The Council's Legal Team has been consulted upon and stated that the works must've been substantially completed and must've been completed before 25th April 2024 to benefit from the transitional 4-year rule. The applicant provided aerial photographs from 2021 which shows the property watertight and structurally complete, which strongly supports substantial completion of the building.

The applicant has also erected a raised terrace at the rear of the property, however, has decided to remove this as part of this certificate as it would mean that the scheme would be subject to the 10-year rule and it would be part of one whole application.

As such under Section 191B of the TCPA 1990 the applicant has provided concise and unambiguous evidence that the scheme was substantially completed before the 25th April 2024, and that the building was watertight and structurally complete in 2021, and thus the

building has been substantially complete in excess of five years. As such this certificate should be granted.

It should be noted that this certificate relates to the operational development of a building only which currently has no use as it has not been brought into use or occupied for a period of 10 years or more. Planning permission should be obtained for any future use of the building prior to it being brought into use or occupied.

Recommendation

LDC to be granted