

Delegated Report for Certificate of Lawful Development for Existing Use EPF/2327/24

Description of Site:

The application site is a new build two storey detached dwellinghouse sited on the southeastern side of Bracken Drive an established built-up area in Chigwell. Surrounding area is characterised by its larger style detached dwellings with landscaped frontages. The site has several trees with TPO's.

Description of Proposal:

Certificate of Lawful Development for existing use - seeking confirmation that enforcement of non-compliance with pre commencement landscaping conditions 5 and 7 of EPF/2132/19 is now time immune.

Relevant History:

Reference	Description	Decision
EPF/2327/24	Certificate of Lawful Development for existing use - seeking confirmation that enforcement of non-compliance with pre commencement landscaping conditions 5 and 7 of EPF/2132/19 is now time immune	Pending
APP/J1535/W/23/3335793	Written Representations – Against a Refusal (EPF/2224/23).	Appeal Dismissed
EPF/2224/23	Variation to condition 5 and condition 7 on planning approval EPF/2132/19 (New detached single family dwelling to replace existing bungalow)	Refuse
EPF/0650/23	Approval of Details Reserved by Conditions 5 'Landscaping and 7 'Arboricultural Impact Assessment' of EPF/2132/19 (New detached single-family dwelling to replace existing bungalow)	Refuse
EPF/1117/23	Approval of Details Reserved by Conditions 5 'Landscaping and 7 'Arboricultural Impact Assessment' of EPF/2132/19 (New detached single-family dwelling to replace existing bungalow)	Refuse
EPF/1386/22	Approval of Details Reserved by Conditions 5 'Landscaping and 7 'Arboricultural Impact Assessment' of EPF/2132/19 (New detached single-family dwelling to replace existing bungalow)	Refuse
EPF/2132/19	New detached single family dwelling to replace existing bungalow	Approve with Conditions

Earlier planning history relate to TPO's and extensions to the pre-existing dwelling.

Consultation Carried Out and Summary of Representations Received

PARISH COUNCIL: None.

Submitted evidence: -

Site Location Plan

Planning Statement

Statutory Declaration: Jasminder Walia dated 11 November 2024 (Applicant).

Assessment of claim

Section 191 of the Town and Country Planning Act 1990 allows the applicant to ascertain whether any existing use of buildings or other land is lawful.

The Planning and Compensation Act 1991 introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

In this case, as defined in section 171A of the Town and Country Planning Act 1990, the applicant would need to prove that either the development does not require planning permission or that the breach of planning control has been continuous for a period of ten years.

Additionally, 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 NPPG 06.

Case Assessment

This application seeks confirmation that breaches of prior commencement conditions 5 and 7 of EPF/2132/19 is immune from enforcement action as no action has been taken within 4 years of the breach. Enforcement case commenced on 28/10/2019 for work not in compliance with planning conditions.

Section 171B(3) provides that no enforcement action can be taken (among other cases) a breach of planning condition after the end of the period of ten years from the date on which the breach first occurred. Assuming the breach has been continuous, any breach of condition which first occurred more than ten calendar years before the date on which the LPA formally recognise its occurrence (by notifying their opinion that there has been a breach to the owner or occupier of the land) has perpetual immunity. As the applicant was informed of the breach by the LPA on 28/10/2019, as of today's date 17/01/2025, the case remains within the ten-year enforcement period.

The Council is not satisfied that non-compliance with prior-commencement landscaping conditions 5 and 7 of EPF/2132/19 occurred after ten years of the planning breach and is not time immune from enforcement action.

Conclusion:

The evidence outlined above indicates that the site outlined in red (drawing no. 540-100) does not meet the requirements of section 191.

The Council is not satisfied that on the balance of probabilities, there is sufficient clear and unambiguous evidence that the building outlined in red on the Site Location Plan drawing by Studio Jaya dated August 2019 at 78, Bracken Drive, Chigwell, IG7 5RD seeking confirmation that enforcement of non-compliance with pre commencement landscaping conditions 5 and 7 of EPF/2132/19 is now time immune.

