
Appeal Decision

Site visit made on 12 October 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 21 October 2016

Appeal Ref: APP/W1905/X/16/3148645
119 Trinity Lane, Waltham Cross EN8 7EW

- 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 Katarzyna Wrona against the decision of Broxbourne Borough Council.
 - The application Ref 07/15/1064/LDP, dated 7 November 2015, was refused by notice dated 11 February 2016.
 - 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: to construct a rear loft extension and insert two 'velux' windows to the roof on the front elevation.
-

Decision

1. The appeal is dismissed.

Matters of clarification and background information

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 or not the reasons are well founded. The planning merits of the case do not fall to be considered. In relation to this LDC application the question to be asked is whether or not the proposed development constitutes permitted development under the Town and Country Planning (General Development) Order 2015 (GPDO). The decision turns on whether or not the property at No 119 is a dwelling house or a flat for the purposes of the GPDO.
3. In any LDC application, an applicant is required to provide evidence that is sufficiently precise and unambiguous to justify the grant of a certificate 'on the balance of probability'. The burden of proof is firmly on the applicant and a local planning authority must be supplied with sufficient information to satisfy them that the proposed development is lawful. The reference to Class A in the Council's decision notice is incorrect. As a roof extension the proposal falls to be assessed against Class B of the GPDO. At the time of the application the full plans of the property were not submitted. The storage area to the ground floor was omitted.
4. The appeal building is a mid-terraced two bedroom property within a row of four dwellings built in the 1990s. The ground floor area is minimal in area due to an access archway which leads to Nos 117 to 123. The access runs underneath the main first floor area of No 119. Planning permission for the four houses (7/726/1997) refers to a terrace of four dwellings: 3 no 3 bedroom and 1 no 2 bedroom houses and associated parking. It was approved on 4 February 1998.

Reasons

5. Despite the above description of the permitted development the Council contends that the appeal property is a 'flat' as opposed to a dwelling house. The Council refers to the definition of a flat within the GPDO as being '*a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally*'. The Council indicates that all of the living accommodation is located on one floor and that underneath the property's main floor there is a shared access which leads to the parking area to the rear of the four dwellings. The Council stresses that this land is not owned by the appellant and, therefore, that the property is divided horizontally making it a flat under the GPDO definition.

6. On behalf of the appellant it is argued that a '*flat is a separate self-contained unit within another dwelling, usually with other flats above and/or below*'. It is pointed out that the property has a small ground floor area which is used for storage purposes and that the developer designed the dwelling with a large first floor to make up for the fact that there was no living accommodation at the ground floor level. It is also indicated that the Council's statement (5.4) is incorrect in that there are two storage spaces including one with a double door and which open into the space within the archway.

7. With regard to the appellant's definition of a 'flat', this differs from that in the GPDO. The GPDO definition must be taken on its face when considering whether or not a use or development is lawful. The GPDO does not indicate that a 'flat' must form part of another dwelling. In fact 'flats' are 'dwellings' in themselves. The question in this case is whether or not the appellant's property forms '*part of a building from some other part of which it is divided horizontally*'.

8. Having seen the drawings; the other houses and the overall layout of this development it is clear that, with the exception of the minimal access and storage space, the appellant's property is located over the top of that part of the building which forms the 'access way' to the rear. The 'access way' itself structurally forms a central element within the overall built form of the development. The appellant's living accommodation is divided horizontally from this part of the building. The dwelling therefore, in my view, falls into the category within the GPDO which is defined as a 'flat'. Even though the planning application referred to No 119 as a 2 bedroom 'house', I consider as a matter of fact and degree that the property is a 'flat' for the purposes of the GPDO.

9. Furthermore, from my inspection of the submissions and the building, I consider that No 119 is perceived as a flat rather than as a house. Overall, therefore, I consider that the Council's decision not to issue a LDC was sound. I realise that the appellant will not welcome my decision but this does not preclude an application being submitted for the desired alterations.

10. In reaching my conclusions I have taken into account all of the other matters raised in support of the appeal. These include the fact that the appeal property forms part of a terrace; the full details of the appeal statement; the submitted drawings and the previous communications with the planning authority. However, none of these alter my conclusion that the proposed development is not permitted under the GPDO. Nor is any other matter of such significance so as to change my decision that the appeal should fail.

Anthony J Wharton

Inspector