The Planning Inspectorate

Appeal Decision

Site visit made on 8 November 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 30 November 2016

Appeal Ref: APP/T5150/X/16/3155902
61 Oxgate Gardens, London NW2 6EA

- 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 and Mrs Choraria against the decision of the Council of the London Borough of Brent.
- The application, Ref 16/1581, dated 16 April 2016, was refused by notice dated 20 June 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 described as 'Part hip to gable roof conversion, rear and side dormer'.

Decision

1. The appeal is dismissed.

Procedural Matters

2. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.

3. Applying the terms of Section 192(2) of the 1990 Act to the appeal proposal, the Council has determined the application against the provisions set out in Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). In reaching my decision I have had regard to all of the information that was before the Council and that which has been submitted as part of the appeal. I have also visited the site in order to understand the context for the appeal.

Reasons

4. The appeal is solely concerned with No 61 Oxgate Gardens, an end of terrace property that has been extended to the rear and side. No other address was included on the LDC application form. The boundaries of this property were shown on a plan as required by Article 39(2)(a) of the Town and Country Planning (Development Procedure)(England) Order 2015. The appellant proposes to construct a flat roof dormer across the rear and side of the roof and change the shape of the side of it from a gable to a partial hip.

5. The Council accepts that the proposed extension to the roof accords with all the limitations set out in Class B of the GPDO and I see no reason to take a different view. The principle point at issue is that on its own No 61 is not a dwelling house. This is because in the past it has been combined with the adjoining dwelling house No 63. There is now one gas supply into the combined properties, one source of heating and a single electricity supply. In terms of layout, more or less the whole of the former dividing, party wall between the former dwelling houses at ground level has been removed to create a single lounge and dining area across both properties. The former kitchen at No 63 is now used as a utility room and the whole of the combined property is occupied by an extended family. They cook in the one kitchen at No 61 and also make use of the combined garden areas.

6. As such, I find that No 61 is part of a dwelling house and not a self-contained, single dwelling house in itself. The GPDO sets out that the enlargement of a property is only permitted development (PD) if it relates to **a** (my emphasis) dwelling house, that is a single dwelling house. The Procedural Guide – Certificate of lawful use or development appeals – England advises that it is not possible to amend an LDC application to overcome a Council's reasons for refusal. Rather it is necessary to make a fresh application. This is because, for example, in this appeal, to enlarge the area of land included in the application would amount to a fundamental change to the proposal originally determined by the Council.

7. To summarise, whilst the proposed development would accord with the limitations set out in Class B of the GPDO, it would still not be PD as the appeal site is not a single dwelling house.

Conclusion

8. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of what is described as 'Part hip to gable roof conversion, rear and side dormer' 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.

D Fleming

INSPECTOR