

Appeal Decision

Site visit made on 25 November 2019

by D A Hainsworth LLB(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 6th December 2019

Appeal Ref: APP/W5780/X/19/3230365

41 Grosvenor Gardens, Woodford Green IG8 0BE

- The appeal is made by Chivanna Lovocat under section 195 of the Town and Country Planning Act 1990 against a refusal by the Council of the London Borough of Redbridge to grant a lawful development certificate.
 - The application Ref: 0329/19, dated 26 November 2018, was refused by notice dated 13 March 2019.
 - The application was made under section 192(1)(b).
 - The development for which the certificate is sought is "Loft Conversion with rear dormer. Hip to Gable roof alteration incorporating Juliet Balcony. Two front roof lights. New window to gable end".
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Decision

1. The appeal is allowed and attached to this decision is a lawful development certificate relating to the operations described in the application, which are considered to be lawful if begun at the time of the application.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the operations would be lawful if begun at the time of the application for the certificate. The planning merits of the operations are not relevant to the appeal and there is no planning application before me.
 3. The Council refused the application because they considered the operations would not be permitted by Class B of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to the limitations set out in B.1 and the conditions contained in B.2. In the Council's opinion limitation B.1(d) would not be met. The officer's report confirms that all other limitations and conditions in Classes B and C would be complied with.
 4. B.1(d) states that development is not permitted if "the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than—
 - (i) 40 cubic metres in the case of a terrace house, or
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(ii) 50 cubic metres in any other case".

5. The appellant and the Council are agreed that the additional cubic content calculated in accordance with B.1(d) would be between 48m³ and 49m³. The Council, however, consider the house to be a terrace house, to which the 40m³ limit applies, whereas the appellant considers it to be a semi-detached house to which the 50m³ limit applies.
6. The house looks like a typical two-storey, bay-windowed, semi-detached house in a road frontage of similar houses. The issue to be decided, however, is whether it could nevertheless be a terrace house for the purposes of Part 1 of Schedule 2 to the Order. A "terrace house" is defined for these purposes by paragraph I of Part 1 as follows: -
 - " "terrace house" means a dwellinghouse situated in a row of 3 or more dwellinghouses used or designed for use as single dwellings, where—
 - (a) it shares a party wall with, or has a main wall adjoining the main wall of, the dwellinghouse on either side; or
 - (b) if it is at the end of a row, it shares a party wall with or has a main wall adjoining the main wall of a dwellinghouse which fulfils the requirements of paragraph (a)".
7. In my opinion, the word "either" in paragraph (a) above is used in its meaning of "each of two", rather than in its meaning of "one or the other". A "party wall" in this context is normally considered to be a wall that is on the properties of two householders and forms part of a building or a wall that is on the property of only one householder but is used by another householder to separate buildings. A "main wall" of a house is in my opinion a wall that is one of the major structural walls of the house.
8. The house obviously shares a party wall with the attached semi-detached house, No 39. Since it is not at the end of a row, the factor therefore that determines whether it is a terrace house (as defined for the purposes of Part 1) is whether it also "shares a party wall with, or has a main wall adjoining the main wall of" the next semi-detached house in the road frontage, No 43.
9. Nos 41 and 43 both have single-storey buildings attached to their two-storey side walls, which occupy spaces between these side walls and the side boundary between the properties. There is a drop between No 41 and No 43 and the buildings have therefore been erected on different ground levels. They each have their own separate foundations, walls, heights and depths. There is a very narrow gap between the walls of the buildings where they are next to each other at the side boundary.
10. As a matter of fact and degree, I consider that there is no party wall here. There are no adjoining main walls either, since the nearest main walls of the houses are the two-storey side walls, which are several metres apart.
11. I have therefore concluded that No 41 is not a terrace house as defined for the purposes of Part 1. Limitation B.1(d) would be complied with because the additional cubic content would be less than 50m³. Since all the other limitations and conditions applying to Class B would also be complied with and the front roof lights would comply with Class C, the proposed operations would be

permitted development and would be lawful if begun at the time of the application for the certificate.

12. I am satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), the appellant has been granted a lawful development certificate under section 192.

D.A.Hainsworth

INSPECTOR