



Appeal Decision

Site visit made on 14 December 2020

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2021

Appeal Ref: APP/E5330/D/19/3228340

11 Kellaway Road, London SE3 8PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Babad against the decision of Royal Borough of Greenwich Council.
 - The application Ref 19/1034/PN1, dated 13 March 2019, was refused by notice dated 23 April 2019.
 - The development proposed is described as 'Single Storey Ground Floor Extension, 6m depth, and 3m height'.
 - This decision supersedes that issued on 24 September 2019. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and prior approval is not required under the provision of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for a single storey ground floor extension of 6m depth and 3m in height at 11 Kellaway Road, London SE3 8PW in accordance with the application 19/1034/PN1 made on 13 March 2019, and the details submitted with it including plan numbers 03 and 04, pursuant to Article 3(1) and Schedule 2, Part 1, Class A, and is subject to the conditions, limitations or restrictions applicable to development permitted by Class A.

Application for costs

2. An application for costs was made by Mr Babad against Royal Borough of Greenwich Council. That application is the subject of a separate Decision.

Procedural Matters

3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) grants planning permission for certain classes of development, described as permitted development (PD). To amount to PD, it is necessary for proposals to accord fully with the limitations relevant to the development concerned, as set out in the Order.
4. In this case, having regard to the Council's reason for refusal, it is uncertain whether the proposal would meet the relevant criteria for permitted development. In considering the application for Prior Approval (PA) under Schedule 2, Part 1, Class A the Council stated that the Prior Notification (PN)

appeal did not fall within the limits and procedures of PD as set out in the GDPO.

Main Issue

5. The main issue is whether the dwelling would comply with the limitations under Schedule 2, Part 1, Class A of the Order.

Reasons

6. The Council has refused four identical PN applications for a rear extension on the basis that it was not satisfied that the premises constituted a single dwellinghouse, but rather was a property comprising four flats. Council Tax records indicate that the premises has been registered as four separate flats. However, the criteria applied for tax categorisation differs from those relevant for the purposes of planning law. Therefore, Council Tax categorisation does not necessarily indicate a definitive planning use of the premises.
7. The Council indicates that visits to the premises were made in 2016 and 2019. During the 2019 visit the Council advises that not all rooms had been inspected although this is disputed by the appellant. During my site visit access was provided to all the internal and external areas of the premises. The premises comprised four bedrooms all with small shower rooms. There was a communal kitchen at the first floor.
8. The appellant claims that the premises has been operating as a House in Multiple Occupation (HMO) for which a licence to operate as an HMO had been issued in July 2019.
9. Statements of Declarations have been submitted by the appellant, from the managing agent involved with the management of the premises and from one of the tenants of the premises. The management agent states that the premises had been converted from a single dwellinghouse to a four room HMO under PD in 2016. Since that time and under his management the premises has been let as an HMO to four unrelated individuals. Tenancy records held by the managing agent indicate lettings to four individuals during a period when he was not managing the premises. It is also stated that since the Council visited in 2016, kitchen cabinets and sinks within the rooms had been removed.
10. The Council's Tax department confirmed that in December 2016 each unit had a mini kitchenette comprising a sink, fridge and cupboards and separate meters. The managing agents Declaration states that none of the rooms have ever hosted cooking facilities and that all cooking has been carried out within the communal kitchen. The Declaration also states that there is only one electric meter. Further to this, the Declaration submitted by the tenant who has rented a room since December 2016 states that the communal kitchen is used for cooking as no cooking facilities were present in the room.
11. The Council considers that a Lawful Development Certificate would potentially establish the lawful use of the premises. However, the appellant argues that this is not a requirement of a PN application for the purposes of the GPDO. On the balance of probabilities, it appears to me that the premises had been converted to an HMO in 2016 and this use has continued. During this time there has been a communal kitchen in the premises. I do not consider the premises has comprised self-contained separate flats, despite hosting some

limited kitchen related facilities for a period of time. On the available evidence I consider the lawful use of the premises to be an HMO.

12. In 2016 PD Schedule 2 Part 3, Class L of the Order would have allowed for the change from a single dwelling house to an HMO. The conversion took place prior to the Council Article 4 direction that came into force in September 2018 which removed such PD rights.
13. An HMO is a single dwellinghouse, albeit in multiple occupation. The Council acknowledges that both C3 and C4 dwellinghouses benefit from PD rights. Schedule 2, Part 1, Class A.1 and A.2 of the Order sets out PD rights for development within the curtilage of a dwellinghouse. I have assessed the enlargement to the dwellinghouse against Class A.1 and A2 as follows: -
 - A.1(a) - permission to use the existing dwellinghouse as a dwellinghouse has not been granted only by virtue of Class M, N, P or O;
 - A.1(b) - the resultant works would not exceed 50% of the ground within the curtilage of the dwellinghouse;
 - A.1(c) - the extension would not exceed the existing height of the dwellinghouse;
 - A.1(d) - the eaves would not exceed the existing eaves of the dwellinghouse;
 - A.1(e) - the extension would not extend beyond the principal elevation of the original dwellinghouse or front a highway and form a side elevation of the original dwellinghouse;
 - A.1(f) - is subject to A.1(g) (as amended) as the dwellinghouse is not on article 2(3) land or a site of special scientific interest. The extension would not extend more than 6 metres beyond the rear wall of the original dwellinghouse (noting this is a terraced property) or exceed 4 metres in height;
 - A.1(h) - the enlarged part of the dwellinghouse would not be more than single storey;
 - A.1(i) - the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse but the height of the eaves of the enlargement would not exceed 3 metres;
 - A.1(j) - the enlarged part of the dwellinghouse would not extend beyond a wall forming a side elevation of the original dwellinghouse; or
 - A.1(k) - the proposal does not consist of or include the construction of a verandah, balcony, raised platform, microwave antenna, chimney, flue, soil/vent pipe or an alteration to any part of the roof of the dwellinghouse.
 - A.2 - the dwellinghouse is not on article 2(3) land to which the criteria set out under A.2 could apply.
14. The extension would meet the criteria set out under A.1 of Class A, therefore, the enlargement to the dwellinghouse would benefit from PD rights. Under the required neighbour consultation process no objections to the PN application were received, therefore, paragraph A.4(7) of Class A has not been triggered.

Conclusion

15. For the reasons given above, I conclude that prior approval is not required and the appeal should be allowed.

Nicola Davies

INSPECTOR