



Appeal Decision

by **K Stephens BSc (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 May 2021

Appeal Ref: APP/N5090/X/20/3260581
128 Hendon Way, London NW2 2NG

- 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 Amir Abbasi against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/3390/192, dated 24 July 2020, was refused by notice dated 21 September 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended ('the Act').
 - The development for which a certificate of lawful use or development is sought is for a loft conversion with raised gable wall and rear dormer extension plus 2-front roof lights. Single storey rear garden annex outbuilding gym/playroom & storage for family dwellinghouse.
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Decision

1. The appeal is dismissed

Procedural Matters

2. On a review of the appeal and submitted evidence, I am able to proceed to a decision without the need for a site visit.
3. The description in the heading above is taken from the application form. The Council's description on the decision notice is different and reads "Roof extension involving hip to gable, 1no side gable windows, rear dormer windows, and 2no front facing rooflight. Single storey rear garden annexe outbuilding". On the appeal form the appellant has quoted the Council's description and in doing so has agreed to the Council's description¹. I will therefore proceed on the basis of the development so described by the Council, notwithstanding the description above.
4. The purpose of an LDC application made under section 192 of the Act is to find out whether a future development, as described, would be lawful at the time the application was made. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority. Planning merits are of no relevance. The onus is on the applicant to provide all the relevant information and evidence to support his case.

¹ There appears to be a typographical error on the appeal form in that the word 'outbuilding' is incomplete.

Main Issue

5. The main issue is whether the Council's decision to refuse the LDC application was well-founded.

Reasons

6. The Council has refused the LDC application as it considers the proposed works to the roof and the erection of an outbuilding would not be in conformity with Class B, C and E of Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO').
7. The proposed development comprises 3 elements that come under different classes of the GPDO. Class B is for "the enlargement of a dwellinghouse consisting of an addition or alteration to its roof". Class C is for "any other alterations to the roof of a dwellinghouse" and would include rooflights. Class E relates to "buildings etc incidental to the enjoyment of a dwellinghouse".
8. There is no dispute that the different elements of the proposed development comply with all of the conditions and limitations associated with each respective class. The only point of dispute is whether the appeal property comprises more than one dwellinghouse for the purposes of the GPDO. This is relevant because Part 1 of the GPDO, to which Classes B, C and E belong, relates to "Development within the curtilage of a dwellinghouse" [my emphasis].
9. The appeal property No.128 is a semi-detached two-storey 3-bedroom dwelling (hereafter 'the original dwelling'). The proposed development would create another bedroom with en-suite bathroom in the roof space. Attached to the original dwelling is a single storey side and rear extension. According to the planning history, planning permission² was granted for a "Single storey side and rear extension including the formation of a new front entrance to accommodate new self-contained flat". This is borne out by the submitted floor plans and elevations that show a self-contained unit of residential accommodation that comprises its own entrance door and hall, separate from the original dwelling, that gives access to a kitchen, bathroom, bedroom and lounge.
10. The description of the planning permission described above does not say or imply that the original dwelling would be converted to something else or subdivided. Whether other developments are described differently on their respective planning permissions is of no relevance to the case before me, which I must consider on its own merits.
11. There is no definition of 'dwellinghouse' in the Act, and a self-contained flat is normally a dwellinghouse for the purposes of the Act. Article 2(1) of the GPDO sets out interpretations for the purposes of the Order. A dwellinghouse is described as "except in Part 3 Schedule 2 to this Order (changes of use), does not include a building containing one or more flats or a flat contained within such a building". A flat is described as "except in the expression 'flat roof' means 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."

² LPA ref: F/03829/09 – granted 16 December 2009

12. The self-contained flat was not created by occupying some floor area within the existing structure of the original dwelling. It was created by an extension that was built as an addition to the outside of the original dwelling. According to the submitted floor plans, the original dwelling is shown to be set out as a single dwelling with rooms over two floors and one entrance door, indicative of a single household use. It is not divided horizontally into separate dwellings, as the definition of a 'flat' indicates, or other separate units. From the evidence before me the original dwelling is not a flat nor is it a building containing one or more flats. I find the site comprises two dwellings, namely the original dwelling and a separate dwelling described as a self-contained flat. This conclusion is reinforced by the Council Tax valuation list where both 128 Hendon Way and 128a Hendon Way are listed.
13. The block plan and existing and proposed site plans all show the application red line boundary going around the entire plot or curtilage, which includes the original dwelling and the 'self-contained flat' and the private amenity space to the front and rear, where the proposed outbuilding would be located. This indicates to me there is a single curtilage that the two residential units share or can use.
14. Consequently, I find there is more than one dwellinghouse within the curtilage. Permitted development under Part 1 of the GPDO can only apply to one dwellinghouse within the curtilage. It therefore follows that as there is a contravention of Part 1 on this fundamental point, the proposed works are not permitted development under Classes B, C and E of the GPDO and would not be granted planning permission.
15. The appellant has submitted an amended site plan with his appeal. This plan shows a re-drawn red line that excludes the 'self-contained flat' and some land to its rear. This amended plan is not confirmation that the land for the self-contained flat is no longer part of the curtilage of the original dwelling, or indeed formed part of the application site for the above-mentioned planning permission. As this plan was not before the Council when it made its decision, I cannot include it in my considerations of whether the Council's decision was well-founded.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a loft conversion with raised gable wall and rear dormer extension plus 2-front roof lights and a single storey rear garden annex outbuilding gym/playroom and storage for family dwellinghouse 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.

K Stephens
INSPECTOR