



Appeal Decision

Site visit made on 16 March 2022

by M Madge DIPTP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2022

Appeal Ref: APP/T5150/X/20/3250509

9 Manning Gardens, HARROW HA3 0PF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr H Madarbakus against the decision of London Borough of Brent.
 - The application ref 19/4409, dated 16 December 2019, was refused by notice dated 10 February 2020.
 - 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 hip-to-gable end loft conversion, rear dormer window, flank window, and installation of two front rooflights to dwelling.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed operation which is found to be lawful.

Preliminary Matters

2. The Council's description of the proposed development expands the appellant's description by including elements that are shown on drawing numbers PD-03 and PD-04. A thorough description of the proposed development will not cause injustice and I shall proceed on the basis of the Council's description.
3. There is no dispute that the host property was erected as a semi-detached dwellinghouse, attached to 11 Manning Gardens and separate from 7 Manning Gardens. Both No.7 and the host property have been the subject of single storey side extensions. For the purposes of calculating whether the proposed development would be permitted development, it will be necessary to determine whether, as a result of the single storey extensions, the host property is now a mid-terraced dwellinghouse rather than remaining a semi-detached dwellinghouse. I will return to this matter below.

Main Issue

4. The main issue is whether the Council's reason for refusing to issue an LDC was well-founded.

Reasons

5. Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ('the GPDO') sets out the permitted development rights relating to the extension and alteration of a dwellinghouse. The proposed development involves additions to the dwellinghouse's roof, which is dealt with in the Class B, and other alterations to

the roof, which is dealt with in Class C. Both Classes B and C are the subject of limitations and conditions, Class B.1 (d) confirms that development is not permitted by Class B 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*

(ii) *50 cubic metres in any other case'.*

6. It is agreed by the appeal parties that the cubic content of the resulting roof space is 47.3 square metres. The matter in dispute is whether the host property is semi-detached or a mid-terraced property.
7. Drawing numbers PD-01 and PD-02 show that the existing garages at the host property and No7 abut one another, while the host property's kitchen extension is inset from the boundary with No7. These plans suggest that the properties are physically abutting one another. However, the plans are drawn to a scale of 1:100, at which very small separation distances can be 'lost' due to the thickness of a line.
8. In the GPDO, a *'terrace house'* is defined as *'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 sub-paragraph (a)'.*
9. The dwellinghouse was clearly not originally situated in a row of 3 or more dwellinghouses. A garage does not represent habitable accommodation, and as such the garage wall is not a 'main wall' of the dwellinghouse. Even if I were to find that the 2 garage walls adjoined one another, they would not represent main walls for the purposes of concluding that 5 to 11 Manning Gardens had become a terrace of 4 dwellings.
10. Even if I had found that the garage walls are main walls, I saw that the host property is set at a higher land level than the dwelling at No7. The host property's garage is also set back approximately 1.5 brick lengths behind the front wall of the garage at No7. The eaves height of the host dwelling's garage is approximately 4 brick courses higher than that at No7 and the roof pitch over the host dwelling's garage is lower than that of No7. There is also a visible gap between the 2 garage walls. While a section of the gap between the adjacent roof planes has been filled with a mortarlike substance, this serves no functional attachment purpose. Taking all of these points together, I find these neighbouring dwellings remain physically detached from one another.
11. Having concluded that the 2 dwellings remain detached from one another, the host property remains a semi-detached dwelling and the correct maximum cubic content increase to be applied is the 50 cubic metres found in Class B.1.(d)(ii). The agreed cubic content increase of 47.3 cubic metres is less than the 50 cubic metres limitation.

12. Permission for the host property to be used as a dwellinghouse was not granted by any Class found in Part 3 of the GPDO. No part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof. No part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts the highway. The plans confirm that the exterior works will be constructed of materials having a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The window to be inserted in the side elevation is shown obscure glazed and is shown to be non-opening below 1.7 metres above floor level. The roof lights do not protrude more than 0.15 metres beyond the front roof plane.

Conclusion

13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of hip-to-gable end loft conversion, rear dormer window, flank window, and installation of two front rooflights to dwelling was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M Madge

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 16 December 2019 the matter described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 192(b) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development is "permitted development" falling within Class B and Class C of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

Signed

M Madge

Inspector

Date: 4 April 2022

Reference: APP/T5150/X/20/3250509

First Schedule

Hip-to-gable end loft conversion, rear dormer window, flank window, and installation of two front rooflights to dwelling.

Second Schedule

Land at 9 Manning Gardens, HARROW HA3 0PF

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 4 April 2022

by M Madge DIPTP MA MRTPI

Land at: 9 Manning Gardens, HARROW HA3 0PF

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Scale: Not to Scale

