



Appeal Decision

Site visit made on 15 March 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

Appeal Ref: APP/T5150/X/20/3260488

18 Tanfield Avenue, London NW2 7RX

- 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 William McGowan against the decision of London Borough of Brent.
 - The application ref 20/1716, dated 13 June 2020, was refused by notice dated 13 August 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 described as "loft conversion with rear dormer and front skylights".
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the loft conversion with rear dormer and front skylights which is found to be lawful.

Preliminary Matters and Main Issue

2. I am making my assessment based upon the information and evidence submitted with the application as well as what I saw when I visited the site.
3. The proposal is for the conversion of the roof-space of the building as well as the addition of roof-lights in the front roof-slope and a rear dormer. The Council accepts that the size of the enlargement with the addition of the dormer would be below 50m³. This is within the size threshold within paragraph B.1.(d)(ii) of Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). However, in order to qualify as being permitted development under the provisions of Article 3 of the GPDO, the building would need to be a "dwellinghouse" and the Council dispute whether that is the case.
4. The main issue is therefore whether the Council's decision was well founded but as part of that, it is necessary to consider whether the building is a "dwellinghouse" for these purposes.

Reasons

5. The term 'dwellinghouse' is not defined within the Act. It is also not a condition of qualifying for GPDO Part 1 permitted development rights that a dwellinghouse is of a particular type or for instance that it must be used in accordance with Class C3 of the Town and Country Planning (Use Classes) Order 1987, as amended (UCO). The application states that the building is a

small house in multiple occupation as defined by Class C4 of the UCO. It is relevant to consider whether the building is a dwellinghouse in the normal sense. It has been held in settled case law that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence.

6. The appeal site includes a semi-detached building within which bedrooms are laid out with some independent facilities such as un-fitted microwaves but also some shared facilities such as a kitchen and bathroom. The rooms are not completely self-contained in themselves and living here would integrally involve sharing facilities as one would expect within a dwellinghouse. Given the facilities that the building contains, it does fit within the above definition.
7. The Council refers to Article 3 of the GPDO where it is confirmed that the term "dwellinghouse" for these purposes "does not include a building containing one or more flats, or a flat contained within such a building". Furthermore, "flat" is defined in the same article as meaning "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". In this case, the degree of separation between rooms including locks on doors as a matter of fact and degree does not make them individual dwellings formed from the larger building. Considering this building as a whole, residents would appear to me to rely upon other parts of the building for many of their day-to-day requirements. These rooms are not in themselves individual flats and the building has not been divided horizontally.
8. In the original garden for the dwellinghouse, there is a detached building which is separated by a robust fence from the main dwelling and the pathway around to the rear of that. This outbuilding is addressed on a side gate as '18 B'. The outbuilding has been the subject of previous enforcement action. That resulted in an appeal where the Inspector corrected the notice and granted deemed planning permission for an extension to it. Whether or not the detached building in the garden as I saw it is a dwellinghouse in its own right now, notwithstanding the comments of Inspector in the previous appeal, does not in my view interfere with the permitted development rights for the dwellinghouse at No 18. The detached building is not part of that dwellinghouse in the normal sense of the meaning or any other definition drawn to my attention and it cannot therefore have involved any horizontal sub-division of it.
9. The development as proposed would be permitted development under the terms of Article 3 of the GPDO because the property as shown is a dwellinghouse and the proposals would be within the limitations of Schedule 2, Part 1, Class B.

Conclusion

10. 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 loft conversion with rear dormer and front skylights 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.

Andy Harwood

INSPECTOR