



Appeal Decision

Site visit made on 23 August 2022

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2022

Appeal Ref: APP/B5480/X/21/3278007

17 Brackendale Gardens, Upminster RM14 3XB

- 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 Daniel Lecomber against the decision of the London Borough of Havering.
 - The application ref D0126.21, dated 23 February 2021, was refused by notice dated 22 April 2021.
 - 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 a loft conversion with hipped roof to gable roof and rear dormer, new roof tiles, new roof lights to front roof slope, and part garage conversion to form utility.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. This will depend on whether the proposed roof extensions would constitute permitted development by virtue of the provisions of Article 3(1) and Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

3. In any LDC appeal the appellant is required to provide evidence that is sufficiently precise and unambiguous to justify the grant of a certificate. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
4. Class B of Part 1 of Schedule 2 of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to limitations and conditions. Limitation B.1(d) confirms that such development would not be permitted if the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 40 cubic metres in the case of a terrace house, or 50 cubic metres in any other case. The appellant has demonstrated that the proposed development would increase the cubic content of the original roof space by 49.63 cubic metres.
5. The appeal dwelling shares a party wall with 19 Brackendale Gardens and is separated from the dwelling at 15 Brackendale Gardens by a driveway serving that property. Parts of 19 and 21 Brackendale Gardens are physically adjoined

by what the appellant refers to as a 'mastic silicone pointed strip for weathering purposes only' on the front elevation. The appellant claims that the appeal dwelling and 19 Brackendale Gardens comprise a pair of semi-detached dwellings.

6. The mastic silicone pointed strip between 19 and 21 Brackendale Gardens runs from ground level up to what appeared to be the underside of symmetrical coping stones that mount parapet walls between the brickwork of the two dwellings. The appellant has explained that those properties do not share a party wall and that they have both been extended separately and independently of one another with their own cavity external walls. A small gap can be seen between the two properties at first floor level on the rear elevation from the rear garden of the appeal site. No evidence has been provided to clarify the extent of this gap, such as whether it is consistent between the properties and exists at ground floor and roof levels too.
7. Paragraph I of Schedule 2, Part 1 of the GPDO clarifies that for the purposes of interpreting Part 1, a terrace house is: '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)'.
8. I have been referred to an historic independent surveyor's report¹ which refers to the appeal dwelling as 'a semi detached two storey house'. That report was produced for the purposes of providing a market valuation of the appeal property and it does not examine specifically whether the appeal dwelling would be defined as a terrace house for the purposes of the GPDO.
9. A copy of historic plans² which appear to relate to the then proposed extension to 19 Brackendale Gardens have been provided. A small gap between the proposed ground floor of 19 Brackendale Gardens and the existing ground floor of 21 Brackendale Gardens is annotated as 'void' on those plans. No gap is shown on the proposed first floor plan. No gap is shown on the proposed front elevation, but a gap is shown on the proposed rear elevation, where no parapet wall is shown at 21 Brackendale Gardens.
10. As those historic plans relate to 19 Brackendale Gardens, there is no information before me which demonstrates 21 Brackendale Gardens was accurately surveyed and depicted in them. I also note the proposed ground floor front elevation wall and garage doors shown on those plans do not match their current form and siting. There is also no substantiated evidence before me to show the proposed works to 19 Brackendale Gardens were carried out fully in accordance with those historic plans or that no alterations were subsequently carried out.
11. It is clear that the appeal dwelling shares a party wall with 19 Brackendale Gardens. The southern elevation side wall of 19 Brackendale Gardens, the northern elevation side wall of 21 Brackendale Gardens, and the front elevation walls of 19 and 21 Brackendale Gardens all constitute main walls of those dwellings. Those main walls appear to be adjoined physically, even if it is only

¹ Expert witness report of Mr C.J.N.Gibson FRICS, dated 30 May 2008

² Drawing number 500/01A dated May 02, revised September 02

by way of the mastic silicone pointed strip and coping seen from the front, with a gap on part of the rear elevation. The extent of the gap between the two dwellings on their rear elevations is not clear, and as such I am not convinced that a main wall of 19 Brackendale Gardens does not adjoin a main wall of 21 Brackendale Gardens.

12. Applying the interpretation of Part 1 of the GPDO for 'terrace house' as set out above, it has not been demonstrated in a precise and unambiguous way that the appeal dwelling does not constitute a terrace house at the end of a row of other terrace houses. Therefore, taking all of the above into account, I find that the appellant has failed to show, on the balance of probabilities, that the proposed development would accord with limitation B.1(d) of Class B.

Other Matters

13. I have been referred to other dwellings which are claimed to have matching circumstances to the appeal dwelling, where the Council has described them as semi-detached houses. That may be the case, but it would not convince me to deviate from the interpretation of a terrace house provided at paragraph I of Part 1 of Schedule 2 of the GPDO.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed loft conversion with hipped roof to gable roof and rear dormer, new roof tiles, new roof lights to front roof slope and part garage conversion to form utility 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.

L Douglas

INSPECTOR