



Appeal Decision

Site visit made on 7 June 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2023

Appeal Ref: APP/N5090/X/22/3307143

42 Holdenhurst Avenue, North Finchley, London N12 0JB

- 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 Dale Levine against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/2129/192, dated 20 April 2022, was refused by notice dated 21 April 2022.
 - 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: Roof extension involving hip to gable, rear dormer window, 2no. front facing rooflights and new side gable window.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. No clear description of the proposal is given on the application form and so I have taken the description of development from the Council's decision notice and I am satisfied this is consistent with the drawings provided.

Main Issue

3. The main issue is whether the Council's decision to refuse the application was well-founded or not.

Reasons

4. Under section 192(1) of the 1990 Act, if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the operations in question.
5. Under section 192(2), if, on an application under this section, the local planning authority are provided with information satisfying them that the operations described in the application would be lawful if begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

6. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) grants planning permission for specified forms of development.
7. Schedule 2, Part 1, Class B of the Order concerns the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. This is relevant for the proposed hip to gable and dormer extensions.
8. Schedule 2, Part 1, Class C of the Order concerns any other alteration to the roof of a dwellinghouse, subject to conditions and limitations. This is relevant for the roof lights which are proposed.
9. Based on the cases put to me, the dispute in this case is whether the appeal building is a terrace house or not, for the purposes of paragraph B.1.(d) of Class B of the Order. This states:

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;

10. The Council states that the property is a terrace house and that the total cubic increase to the roof measures approximately 49.5 m³ which exceeds the maximum volume increase for terraced properties, set out in paragraph B.1.(d). This being the case, the proposal would not be permitted development under the Order.
11. The appellant considers that the appeal property is semi-detached. This being the case, it would be subject to a 50 cubic metre allowance under paragraph B.1.(d) of Class B of the Order and so, with no evidence of any other reason why it would not comply with the Order, it would be permitted development.
12. The Order contains a definition of "terrace house". Paragraph I of Schedule 2, Part 1, states:

For the purposes of Part 1 "terrace house" means 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 paragraph (a);
13. The above definition is repeated in the (former) Ministry of Housing, Communities & Local Government's '*Permitted development rights for householders – Technical Guidance*', September 2019. This technical guidance, referred to by the Council, remains current and is an aid to interpretation and application of the Order.

14. The appeal property sits within a row of houses, Nos 34-52, on the north side of Holdenhurst Avenue. As I could clearly see on my site visit, the appeal property shares a party wall with, or has a main wall adjoining the main wall of, the dwellinghouse on either side. I conclude therefore, that No 42 is a terrace house for the purposes of the Order.
15. I have no reason to dispute the 49.5 m³ figure provided by the Council and so the proposal does not comply with paragraph B.1.(d) of Class B of the Order. The proposal is therefore not permitted development.
16. From the photographs provided by the appellant, I fully appreciate that Nos 34-52 appear to be semi-detached houses when viewed from an oblique angle. This is because of a significant gap that exists at the front, between every other house. But stood on the street, directly in front of Nos 40-42, I could clearly see where they are joined together, in the gap between them, by a 2 storey party wall/main wall. This is also seen on the location plan and block plan provided.
17. The appellant has drawn my attention to 38 Holdenhurst Avenue, which he describes as almost identical to the appeal building in terms of design and proportions. The Council referred to No 38 as 'semi-detached' in a delegated report published in 2014, Ref: F/03269/14. But that report pre-dates the Order and the technical guidance and the definitions contained therein. So it makes no difference whether No 38 has previously been described as semi-detached as the appeal property is still a terrace house in light of the relevant definition, set out in the Order and the technical guidance in place at the date of this LDC application.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of: 'Roof extension involving hip to gable, rear dormer window, 2no. front facing rooflights and new side gable window', 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 Perkins

INSPECTOR