
Appeal Decision

Site visit made on 20 December 2016

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 04 January 2017

Appeal Ref: APP/Q1445/X/16/3157376

29 Tredcroft Road, Hove, BN3 6UG

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Bitia Zussman against Brighton & Hove City Council.
 - The application (Ref. BH2016/00243) is dated 25 January 2016.
 - 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 single storey rear extension, hip to gable roof extension, rear dormer, front rooflights, two garden rooms to the rear garden.
 - **Summary of Decision:** Appeal dismissed.
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Preliminary matters

1. For the avoidance of doubt, I should explain that the planning merits of the proposed operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
2. The Council advised the Inspectorate in advance of the site inspection that they would not be able to attend. In view of the nature of the appeal I considered that it was unnecessary for the parties to be present if I was able to access the appeal site, which I was able to do courtesy of the tenant. However, the appellant subsequently arrived, shortly followed by a representative of the Council who was substituting for the case officer. Notwithstanding this I completed the inspection as an unaccompanied visit.

The appeal site

3. The appeal property is a two storey detached dwelling with a second floor in the roof space which has a dormer window on the rear roof slope. Although giving the appearance of having a traditional hipped roof, a significant part of the roof is flat.
 4. An LDC was refused in November 2015 for the proposed erection of single storey rear extension, roof extension with side and rear dormers and side rooflights, extension of garage roof, revised fenestration and other associated alterations as the proposals failed to meet the requirements of the Town and
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Country Planning (General Permitted Development) (England) Order 2015 (the GPDO)

The Council's assessment

5. The Council has indicated that had they determined the application prior to the appeal, the LDC would have been refused for the following reasons:
- i) The proposed windows and glazing to the front and rear elevations at ground and first floor levels would not be of a similar visual appearance to the windows of the existing dwellinghouse in terms of their overall shape and the size of the frames. This is not permitted under Schedule 2, Part 1, Class A, Condition A.3 (a) of the GPDO.
 - ii) The proposed windows to the rear and western side elevations would not be of a similar visual appearance to the windows of the existing dwellinghouse in terms of their overall shape and the size of the frames. Furthermore the rendered finish of the rear dormer would not be of a similar visual appearance to the main roof of the dwellinghouse as viewed from ground level. This is not permitted under Schedule 2, Part 1, Class B, Condition B.2 (a) of the GPDO.
 - iii) The proposed roof extensions would cause the cubic content of the resulting roof space to exceed the cubic content of the original roof space by more than 50 cu m. This is not permitted under Schedule 2, Part 1, Class B, (d.ii) of the GPDO.
 - iv) Insufficient information has been submitted with regards to the two sizeable detached outbuildings, in their relationship to the main dwellinghouse and its occupants, to demonstrate beyond reasonable doubt that given their scale these are – individually and cumulatively – reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. Therefore, the two outbuildings are not permitted under Schedule 2, Part 1, Class E, Condition B.2 (a) of the GPDO.

Main Issue

6. I consider that the main issue is whether the proposals would be permitted development in accordance with the GPDO.

Reasons

7. The development for which an LDC is sought is a single storey flat-roofed full width rear extension which would replace an existing conservatory; the roof space would be enlarged through a 'hip to gable' extension on the side elevations with the new gables being flat roofed in part; the existing rear dormer would be replaced with a 6.62m wide dormer extension; the window of the dormer would be virtually the same width as the dormer and a similar fenestration style and width would be repeated at ground and first floor level through the installation of new windows; an obscure-glazed, non-opening window would be installed at second floor level on the west elevation beneath the flat part of the new gable; four rooflights on the front roof slope are proposed with two on the existing roof and one each on the new roof slope created from the hip to gable extensions. It is also proposed to erect two flat-roofed garden rooms in the rear garden.

Class A - enlargement, improvement or other alteration to a dwellinghouse

8. The proposed front elevation shows the replacement of the first floor windows with a two square windows to replace a rectangular and a round window, and the widening to the sides of a bay window, with the bay wing being rendered at first floor level. These alterations would be materially different in appearance. To the rear of the dwelling, the extent of the proposed fenestration would dominate that elevation. These differences in sizes and shapes would be at odds with Condition A.3.(a) which requires the materials used in any exterior work (other than for a conservatory) to be similar in appearance to those used in the construction of the exterior of the existing dwelling house.
9. Although referring to the use of PVC windows, the DCLG Technical Guidance 'Permitted Development for Householders', April 2016, in expanding on Condition A.3.(a), states that it is important that the windows are of a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of their frames. I consider that this principle applies to any proposed new windows.

Class B - additions etc to the roof of the dwellinghouse

10. There is disagreement between the parties over the calculation of the volume of the roof extensions.
11. The appellant has used the Planning Portal's volume calculator to estimate the total roof enlargement to be 36.04m³ (allowing for the deduction of the existing dormer and chimney stack volumes). The appellant's own calculations indicate an increased volume of 47.23m³ (excluding the chimney stack volume). The appellant has excluded the volume of the second floor (which is within the roof) from the additional roof volume calculations as this is his understanding of how such calculations are based. However this is not critical as the requirement is not to exceed the volume of the original roof space (irrespective of its size) by 50m³.
12. The Council estimates the increase in the roof volume to be 74.6m³ which the appellant claims is a miscalculation and 'doubled up' volumes by accounting for amounts within the hip to gable and re-accounting for this where the flat roof is extended. The appellant contends that by following the Council's methodology, the middle section of the roof would need to be removed when calculating the hip to gable element and treating the projection from the flat roof as separate elements similar to a dormer extension. By this method the additional volume would be 52.39m³ from which the existing dormer and chimney are subtracted giving a net increase of 49.7m³.
13. The appellant's calculation of the increased roof volume is unclear. In the Planning Portal example quoted, the flat portion of the roof extension does not appear to be taken into account and therefore underestimates the volume. My own estimate, which I am satisfied follows a logical approach and reflects that of the Council, provides an increase in volume of similar magnitude to the Council's. I do not follow the appellant's comments about 'doubling up' volumes and removing the middle section of the roof. Adopting a simple geometrical approach to the calculations, and taking the appellant's linear measurements, the volume of the new roof space created by both hip to gable extensions would be 50% of 4.3m (length of flat roof) x 2.9m (gable height) x 3.06 (depth of flat roof to side of roof) which gives a volume of 38.15 m³ to which must be added

the volume of the flanks of the hip to gable extensions. Combining the volume of the dormer of 21.28 m³ the total roof volume created exceeds 50 m³ by some considerable amount.

14. This exceeds the limitations of the GPDO and is not permitted under Schedule 2, Part 1, Class B, (d.ii).

15. Condition B.2 (a) requires that the materials used in any exterior work shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The DCLG Guidance indicates that "this condition is intended to ensure that any addition or alteration to a roof for a loft conversion results in an appearance that minimises visual impact and is sympathetic to the existing house. This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials or match exactly. The visual impacts of the materials used will (be) the most important consideration". The second example of two given states "the face and sides of a dormer window should be finished using materials that give a similar visual appearance to existing house. So the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level. Window frames should also be similar to those in the existing house in terms of their colour and overall shape".

16. The proposed windows to the west and rear elevation of the roof extensions would not be of a similar visual appearance to the existing windows in terms of their overall size and shape of the frames and the rendered finish of the rear dormer would not be of a similar appearance to that of the main roof as viewed from ground level.

17. The proposals would conflict with Condition B.2 (a).

Class C – other alterations to the roof of a dwellinghouse

18. There are four proposed roof lights to the front elevation of the appeal property, two of which would be constructed on part of a roof that currently does not exist, being part of the roof extensions. Whilst such roof lights would be permitted if roof extensions had already been constructed, in the absence of such extensions, two of the roof lights would not be permitted under Schedule 2, Part 1, Class C.1.

Class E – buildings etc incidental to the enjoyment of a dwellinghouse

19. Class E provides permitted development rights for any building or enclosure, swimming pool or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such. The appellant's submitted details indicate that the two garden buildings would be within the limitations imposed by Class E.

20. The Council has used the wrong test in assessing whether the buildings are reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such, as they have applied the criminal test of 'beyond reasonable doubt'. The lower level of test in issues relating to legal arguments in enforcement and LDC appeals is 'the balance of probability'.

21. The appellant provided the Council with the following information on the garden rooms - "The two rooms proposed are required as an art studio/store and an exercise room/store incidental to the enjoyment of the dwelling house. The

proposed buildings will be incidental to and not ancillary to the Main Dwelling. These rooms will not contain a bedroom, bathroom or kitchen.” The appellant also states that they would have provided further clarification to the Council had it been requested. No further clarification has been submitted with this appeal and it is unclear whether the art/studio store is genuinely and reasonably required or necessary either for the pursuit of the occupants’ hobby or for some other reason.

22.The court in *Emin v SSE [1989] JPL 909* confirmed that regard should be had to the use to which it was proposed to put a building and to consider the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwelling house. The physical size of the building in comparison to the dwellinghouse might be an important consideration but is not in itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed buildings were genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.

23.Whilst the purpose of the garden rooms has been stated, I am not satisfied that the incidental quality has been adequately described for me to establish on the balance of probability that the buildings would be genuinely and reasonably required. In applications for an LDC, the onus of proof rests with the appellant. Consequently, I conclude that the two outbuildings are not permitted under Schedule 2, Part 1, Class E, Condition B.2 (a) of the GPDO.

Conclusion

24.For the reasons given above I conclude that the proposed development would not be permitted development in accordance with the Town and Country Planning (General Permitted Development) (England) Order 2015 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.

Formal decision

25.The appeal is dismissed.

P N Jarratt

INSPECTOR