

Appeal Decision

Site visit made on 3 April 2017

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 02 May 2017

Appeal Ref : APP/Q1445/X/16/3165939

Land at Gateways, Highdown Road, Hove, BN3 6EE.

- 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 lawful development certificate by Brighton & Hove City Council dated 24 October 2016.
- The appeal is made by Mr Andrew Peel.
- The application ref BH2016/02526 was dated 20 June 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 lawful development certificate is sought is building works included on the plans attached to the application, namely block plan, location plan, drawing MM/02/Gateways.

Summary of Decision: the appeal is dismissed

Application for costs

1. The Appellant has made an application for costs against Brighton & Hove City Council and this is the subject of a separate decision.

Preliminary Matters

2. The Appellant asks that his intentions for development are taken into account and that I should look to the spirit of the legislation and the impact of the proposal on the overall appearance and internal layout of the building. But for the avoidance of doubt I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.
3. The description of development on the application the subject of this appeal is 'the extent of the building work has been included in the attached plans'. The plans submitted with the application show a single storey front, side and rear extension and alterations to front boundary wall. They show an existing garage replaced by a proposed study. The Council wrote to the Appellant on receipt of the application and stated that the description of development was 'proposed demolition of garage and erection of single storey front, side and rear extension, alterations to front boundary wall' and asked to be contacted if the description was inaccurate. No response was received. The Council

determined the application based on the description of development it had set out in that letter, namely that the proposal included the demolition of the garage. The Appellant in this appeal says that he did not consent to this description of development and that he had no intention of demolishing the garage.

4. Section 192 of the 1990 Act (as amended) does not afford the power to alter the description of development. I therefore have based this decision on the description set out in the application form. The Council say that they relied on a description of development on a previous application which referred to demolition but I must consider the application the subject of this appeal as it stands before me. The plans attached to the application show the alteration of the garage and I will determine the appeal accordingly. I make no assumption that the proposal includes the demolition of the garage.

Main Issue

5. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

6. The appeal site is a two storey dwellinghouse with attached garage.

Front/side extension

7. Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO) sets out permitted development rights for the enlargement, improvement or other alteration to a house subject to certain conditions and limitations. Paragraph A.1 (e) provides that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall which (i) forms the principal elevation of the original dwellinghouse; or (ii) fronts a highway and forms a side elevation of the original dwellinghouse.
8. The parties take different views on whether the garage forms part of the original dwellinghouse. The Appellant places before me historic plans not before the Council when they determined the application. These plans are dated 1932 and appear to show that the garage was part of the original dwellinghouse. This supports the application which refers to the property, including the garage, being built in 1932. There is nothing before me to counter the Appellant's submission that the original dwellinghouse includes the garage and whilst I recognise that the Council did not have the historic plans before them when they determined the application I must base my decision on the evidence before me in this appeal. I determine this appeal on the basis that the original dwellinghouse includes the garage.
9. Turning to whether the proposal would extend beyond a wall which forms the principal elevation. The point at issue between the parties is whether the principal elevation includes the line of the garage which is at an angle to the highway (in which case the proposal extends beyond it) or whether it is the extended line of the forward most projecting point of the garage to the boundary (in which case the proposal would not extend beyond it).

10. Principal elevation is not defined in the GPDO but the Government's Permitted Development for Householders: Technical Guidance (the Technical Guidance) states that in most cases the principal elevation will be that part of the house which fronts directly (or at an angle) the main highway serving the house. It says that the extent to which an elevation fronts a highway will depend on factors including the angle between the elevation of the house and the highway. If the angle is more than 45 degrees it says that the elevation will not normally be considered as fronting a highway. It also states that the principal elevation could include more than one wall facing in the same direction and in such cases all such walls will form the principal elevation.
11. Whilst I recognise that the Guidance is not determinative it does nevertheless provide useful guidance. It does not support the Appellant's interpretation and I see no reason to take a different approach in the circumstances of this case. I find that as a matter of fact and degree in the circumstances of this particular case that the principal elevation is the wall of the original garage that faces the highway and the line of the garage at an angle of less than forty five degrees to the highway. The proposed extension would project beyond that elevation and for these purposes it does not satisfy Class A.1(e).
12. Class A.1(j) provides that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would (i) exceed 4 metres in height, (ii) have more than a single storey, or (iii) have a width greater than half the width of the original dwellinghouse. There is no dispute that Class A.1(j)(i) and (ii) are met and I have no reasons to conclude otherwise.
13. Taking the original dwellinghouse to include the garage the front extension would not have a width greater than half the width of the original dwellinghouse and A.1(j)(iii) is met.
14. Therefore for the reasons set out above I find the proposed front/side extension satisfies Class A.1 (j) but fails to satisfy Class A.1 (e) and requires planning permission.

Rear extension

15. The parties disagree as to whether the rear extension would extend beyond a wall forming a side elevation of the original dwellinghouse for the purpose of Class A.1 (j).
16. The Appellant argues that the proposal would not extend beyond the furthest point on the side elevation near the garage. But the Technical Guidance advises that a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall and that houses will often have more than two side elevation walls. I find that in this case the wall to the bathroom is a side wall of the original dwellinghouse. The rear extension therefore extends beyond a side elevation of the original dwellinghouse.
17. The width of the original dwellinghouse (including the garage) is 12.4 metres. The parties do not however agree on the width of the rear

extension. The Council say it is 7.94 metres and therefore greater than half the width of the original dwellinghouse. The Appellant says its width is 4.1metres but provides no explanation.

- 18.Looking at the application plans I find the Council's measurements to be correct. The rear extension therefore does not meet Class A.1 (j) and does not benefit from permitted development rights.

Conclusion

- 19.For the reasons given above I conclude that the Appellant has failed to show that the proposed extension would be granted planning permission under Article 3 Schedule 2 Part 1 Class A of the GPDO. On the balance of probabilities the development would fail to comply with paragraph A.1 (e) and (j) and express planning permission would be required. The Council's refusal to grant a LDC for the proposed extension was well-founded, albeit for slightly different reasons than those stated by the Council, and the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

- 20.The appeal is dismissed.

S.Praill

Inspector