The Planning Inspectorate

Appeal Decision

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2020

Appeal Ref: APP/Q1445/X/19/3241855
15 Wilbury Crescent, Hove BN3 6FL

- 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 A Collins against the decision of Brighton & Hove City Council.
- The application Ref BH2019/02391, dated 5 August 2019, was refused by notice dated 20 September 2019.
- 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 two new dormers as part of a loft conversion.

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. Following a review of the evidence presented in this case and consultation with the appellant and Council, I decided that a site visit was not necessary. Consequently, I have based my decision on the written evidence provided by the appellant and Council.

2. Where an LDC is sought the burden of proving relevant facts rests with the appellant and the test of the evidence is on the balance of probability.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

4. During the course of the appeal, the Council confirmed that the window in the dormer on the roof slope that forms a side elevation of the dwelling would be obscure glazed and more than 1.7 metres above the floor of the room contained within the proposed dormer. As a result, they indicate that the proposals comply with the condition at B.2 (c), Class B, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). I see no reason to disagree with their conclusions in this regard.

5. However, the Council consider the proposals shown on the plans submitted with the application would not comply with the condition at B.2 (b) (ii), Class B,

Part 1, Schedule 2 of the GPDO. This relates to whether the dormer above the outrigger extends beyond the outside face of any external wall of the original dwellinghouse.

6. The proposed loft conversion includes a dormer window on the rear roof slope of the main section of the dwelling and a second dormer on the side roof of the rear outrigger projection. As the house is split level, with the floors of the main part at a different level to those of the outrigger, the rear wall of the main part of the dwelling extends above the eaves of the outrigger. As such, there is a modest triangular shaped section of wall above the lower part of the roof of the outrigger. The dormer on the rear outrigger would extend behind that triangular section of wall such that it would be beyond the outside face of that section of external wall of the original dwellinghouse.

7. My attention has been drawn to two other cases, one also in Hove subject of an appeal[1] and the other in the London Borough of Bromley[2]. In both those cases, the proposals related to a substantial L shaped roof dormer over the rear roof of the main building and linking to the rear roof of the outrigger extension. The first part of the condition at B.2 (b) (ii), Class B, Part 1, Schedule 2 of the GPDO deals with circumstances where roof extensions link from one section of roof to another. As the two dormer extensions in this case are separate such that they do not link roofs, I do not consider that either of those cases are comparable to the proposal in front of me. Consequently, I need to consider the proposal on its individual merits.

8. Taking account of all the above, I conclude that the proposed dormer above the outrigger would not comply with the condition at B.2 (b) (ii), Class B, Part 1, Schedule 2 of the GPDO.

Decision

9. 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 two new dormers as part of a loft conversion at 15 Wilbury Crescent, Hove BN3 6FL 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.

AJ Steen

INSPECTOR

[1] Appeal reference APP/Q1445/X/18/3209802
[2] London Borough of Bromley decision reference DC/19/03446/PLUD