



Appeal Decision

Site visit made on 10 March 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2020

Appeal Ref: APP/Q1445/X/19/3233112

31 Welbeck Avenue, Hove BN3 4JP

- 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 in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr S McEwan against the decision of Brighton & Hove City Council.
 - The application Ref. BH2019/01606, dated 3 May 2019, was refused in part by the Council by notice dated 28 June 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 (i) single storey rear extension; (ii) single storey side extension; (iii) hip-to-gable roof alterations, 2 roof lights to front elevation; (iv) rear dormer; alterations to the porch and revised fenestration.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the proposal from the application form, with the addition of the alterations to the porch and revised fenestration. The latter were added at the request of the appellant and were included in the Planning Statement dated June 2019 which is listed on the decision notice as one of the documents that was considered. It is also clear from the submitted drawings that alterations to the windows were proposed and the Council indicated in its delegated report that the replacement of the existing windows with dark coloured aluminium framed windows would need planning permission.
3. The Council issued a split decision, granting a certificate for the alterations to the porch but refusing to grant a certificate for the single storey extensions and the proposed roofworks. Although listed in the description of the proposed development, the certificate does not include the revised fenestration, and therefore this element is deemed to have been refused.
4. The appellant is concerned that the Council's decision notice does not make reference to the proposed rooflights in the front elevation. Although it states that the rooflights would be permitted development, the Council considered that it would not be appropriate to grant a certificate for them as the loft conversion needs planning permission. The roof lights are also therefore deemed to have been refused.

5. At the time of my site visit, some of the windows in the house had been replaced with black or dark framed windows, which appeared to be aluminium. Older windows were still evident on the house, some of which had white UPVC frames and others had white painted frames. The works to convert the loft and extend the roof were well advanced.
6. Prior approval¹ has been granted for a single storey rear extension to infill the gap between an original rear 2-storey outrigger with a single storey rear lean-to element and the boundary with the adjoining property. The current proposal shows that part of the lean-to would be retained and a side extension added, which would be connected at eaves level to the previously approved extension. However, the lean-to has been demolished, and footings have been built for the side and rear extension as one structure. There therefore appears to have been some deviation from the submitted plans.

Reasons

7. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful. The appellant's case is that the proposals are permitted development as a result of the rights set out in the GPDO².
8. The Council refused to grant the certificate for the single storey side and rear extensions, on the grounds that the proposal involves the replacement of the original rear lean-to and creates a single enlargement that wraps around the side and rear of the original dwellinghouse, thereby exceeding the limitations in the GPDO. It also considered that this single storey extension comprising the side and rear elements, and the proposed roof works, included fenestration that did not match that of the original dwellinghouse, and hence were not permitted development. Although not included on the decision notice, the Council's delegated report and appeal statement both indicate that the revised fenestration within the existing dwellinghouse does not benefit from permitted development rights under Class A because the material would not be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

Revised fenestration to the existing house

9. Class A Part 1 Schedule 2 of the GPDO gives planning permission for the enlargement, improvement or other alteration of a dwellinghouse. It is subject to the condition A.3(a) that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Thus, in order to be permitted development the works would need to comply with the condition.
10. In this context, 'existing' means the building as it existed immediately before the works are undertaken. There is no dispute between the parties that the house, as it stood before the works the subject of the appeal were commenced, had white UPVC window frames and white painted window frames.

¹ Ref BH2019/00119

² Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

11. The proposal includes limited information on the replacement windows, although the submitted drawings indicate that the proportions would be different and the Planning Statement indicates that dark aluminium frames are proposed. The replacement windows that have already been installed in the existing house have dark coloured aluminium frames that are of a different thickness, material and colour to the existing ones and as a result they do not have a similar appearance.
12. Based on the evidence before me, I conclude that the material used for the revised fenestration is not of a similar appearance to the existing windows, and therefore does not comply with condition A.3(a).
13. The appellant argues that the replacement windows in the existing house are permitted development as the material (aluminium) is similar to UPVC and they can be painted a dark colour under Class C Part 2 Schedule 2 of the GPDO which gives planning permission for exterior painting. However, the proposal does not involve the painting of existing window frames, but the installation of new windows, and therefore does not fall within the remit of Class C.
14. I therefore conclude that the revised fenestration is not permitted development and express planning permission is therefore required for these works.

Roof alterations

15. Class B gives permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. It is subject to condition B.2(a) that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Thus, in order to be permitted development the works would need to comply with these conditions. Dark aluminium framed windows have been installed in the loft conversion, and for the reasons previously set out they are not of a similar appearance to the white UPVC and white painted windows in the existing house. The roof alterations therefore do not comply with condition B.2(a) and express planning permission is therefore required for the works.

Single storey extensions

16. The house is semi-detached and was built with a single storey lean-to which projected from part of the rear elevation of the house and was approximately half the width of the main building.
17. The Council argues that as the original lean-to has now been demolished, the extension is therefore now a wraparound extension that extends beyond the rear elevation of the original dwelling by 5.1 metres. However, in Article 2 Interpretation (1), the GPDO defines 'original' as (a) a building existing on 1st July 1948 as the building as existing on that date; or (b) in relation to a building built on or after 1st July 1948, as so built. There is no dispute between the parties that the lean-to was part of the original building. It is evident from the submitted drawings and from what I observed on site that the rear extension as built does not extend beyond the rear of the original dwelling, being the rear wall of the now demolished lean-to.
18. However, it is also clear that even if the original lean-to had been retained, the works would result in the rear element of the extension being connected to the side element, as the eaves of the extension are higher than the eaves of the lean-to. It is made clear in A.1(ja) that any total enlargement should not

exceed the limitation, being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined. As a result, the width of the combined side and rear extension would be more than half of the width of the original house, and would therefore exceed the limitation of Class A.1(j). Therefore, notwithstanding the prior approval that has been granted for much of the rear element of the extension, the single storey side and rear extension would not benefit from permitted development rights under Class A Part 1 Schedule 2 of the GPDO.

19. The windows in the extension would have dark aluminium frames which would not be of a similar appearance to the existing windows. The proposal would not therefore comply with condition A.3(a). For these reasons, express planning permission is required for the extension.

Front roof lights

20. Two rooflights are proposed in the front roof slope. One of them would be entirely within the larger roof that would be created by the hip-to-gable extension. The other would be largely located within the existing roof, but it is not clear whether it could practicably be installed without the roof being extended. While rooflights benefit from permitted development rights under Class C Part 1 Schedule 2 of the GPDO, in this case they form part of the hip-to-gable roof extension, which I have already established would require planning permission. The certificate cannot therefore be issued for the rooflights as they would be at least partially within an extension which requires planning permission, and cannot be severed from it. It would not therefore be possible to issue a split decision granting a certificate for the rooflights.

Conclusion

21. 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 single storey rear extension, single storey side extension, hip-to-gable roof alterations, 2 roof lights to front elevation, rear dormer and revised fenestration, 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.

N Thomas

INSPECTOR