
Appeal Decision

Site visit made on 13 July 2022

by Sandra Prail MBE, M.B.A., LLB (Hons), Solicitor (non practising)

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

Decision date: 9 August 2022

Appeal Ref: APP/Z3825/C/21/3286217

17 Bramber Avenue, Storrington, Pulborough, West Sussex, RH20 4HZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Horsham District Council.
- The appeal is made by Ms Sharon Goldring.
- The notice was issued on 29 October 2021.
- The breach of planning control as alleged in the notice is without planning permission the erection of a dormer and associated windows and doors in the dormer as outlined in the approximate location in blue on the plan attached to the notice.
- The requirements of the Notice are (i) cease the use of the rear dormer for human habitation, (ii) remove the rear dormer from the land, (iii) restore the roof to its former condition, to include matching materials to the existing dwelling house and (iv) remove from the land all materials and debris resulting from taking the above steps.
- The period for compliance with the requirements is 6 months for step (i), 8 months for step (ii) and 10 months for steps (iii) and (iv).
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of decision: the appeal is allowed and the enforcement notice is quashed

Application for costs

1. An application for costs has been made by the Appellant against the Council. This is the subject of a separate decision.

Preliminary matters

2. At my site visit the Appellant raised questions concerning the document exchange in the appeal and the history of site visits by the Council. The Council's representative said that she would check the history to ensure that there was no procedural flaw in the appeal process. Correspondence then ensued between the parties shared with the Planning Inspectorate. I permitted the Appellant to comment on the Council's response to the issues raised at the site visit but did not permit further exchange or additional documentary evidence as the timescale for written representations had passed and no exceptional circumstances justified doing so.
3. At the site visit I was invited to climb scaffolding to view the roof. I declined to do so (as did the Council representative.) I am satisfied that I am able to determine this appeal on the evidence before me.

The appeal on ground (c)

4. This ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof falls on the Appellant and the test of evidence is the balance of probabilities. The Appellant's evidence does not need to be independently corroborated in order to be relied upon but it does need to be precise and unambiguous.
5. A breach of planning control comprises the carrying out of development without planning permission. The meaning of development is set out in section 55 of the 1990 Act, as amended and includes the carrying out of building, engineering, mining or other operations in, on, over or under land. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants planning permission for specified classes of development (known as permitted development), subject to certain conditions and limitations. Schedule 2 Part 1 Class B of the GPDO (Class B) grants permitted development rights for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Class B is subject to a number of conditions including (i) that no part of the dwellinghouse exceed the height of the highest part of the existing roof and (ii) that no part of the dwellinghouse as a result of the works extends beyond the plane of any existing roof slope which forms the principal elevation of the dwelling and fronts a highway.
6. The appeal site is a detached bungalow located in a cul-de-sac in a residential area. The notice concerns the erection of a dormer at the rear of the property. An application for a certificate of lawful use (CLU) for the dormer was refused in March 2021 on the grounds that it had not been shown that Class B was met in terms of the roof height and projection. That refusal is not the subject of this appeal. This appeal concerns the enforcement notice subsequently issued by the Council.
7. The issue in dispute in this appeal under ground (c) is whether the dormer constructed at the appeal site at the time of service of the notice (29 October 2021) falls within Class B and has the benefit of permitted development rights. The appeal concerns the development which has occurred ie that which was alleged at the time of issue of the notice not some earlier or subsequent altered development. If Class B is met then no planning permission is required and there is no breach of planning control. If Class B is not met then there is a breach of planning control and planning permission is required. Planning merits are not relevant in this ground of appeal.
8. The Appellant says that the building works commenced in September 2020 and were completed in November 2021. She provides plans of the dormer as constructed, emails and photographs provided by the Approved Building Inspector and photographs taken by the Appellant on or around 4 November 2021. She says that the Council undertook site inspections between September and March 2021.
9. The email correspondence between the Appellant and the Building Inspector specifically deals with the issues in dispute. Although I recognise that the Inspector was considering the matter from a Building Regulation perspective his description of his observation at the time of his final inspection on 18

November 2021 is objective, factual and detailed. He recorded that the conversion of the existing roofspace did not dictate the need to raise the existing ridgeline and that the existing ridgeline appeared unaltered as existing ridge tiles were still in place as well as existing fascia and soffits to the gable flank. This evidence supports the Appellants version of events. Photographs produced by the Appellant do not show the works extending to any material extent beyond the plane of the existing roof slope. There is no evidence from the Council since the 4 March 2021 site visit. They produce the application and supporting plans and refusal of a CLU in March 2021, photographic evidence from neighbours, photographs taken at site visits on 3 February 2021 and 4 March 2021 in connection with the CLU application.

10. The Appellant's version of events is supported by correspondence with the Building Inspector around the time of issue of the notice. The Council's evidence concerns a period prior to the issue of the notice. It is entirely possible (and consistent with the Appellant's version of events) that the dormer was not in accordance with Class B for the reasons claimed by the Council in March 2021 but when complete and at the time of issue of the notice altered to satisfy Class B. An enforcement notice concerns development carried out and therefore the plan submitted in relation to an earlier CLU application and details of a 'dry ridge' method of installation are not definitive as to the development at the time of issue of the notice. Insufficient doubt is cast upon the Appellant's version of events to make it less than probable. On the evidence before me I conclude that on the balance of probabilities it is likely that at the date of issue of the notice the development carried out fell within Class B permitted development rights and did not require planning permission.
11. I have carefully considered the representations from neighbours including the photographic evidence before me. But issues concerning car parking, visual harm and privacy concern planning merits which are not relevant to this ground of appeal and photographs are not contemporaneous with the issue of the notice.
12. Although not strictly necessary I shall address the Council's submission that although the difference between the development as they observed it and Class B permitted development is marginal that Class B necessitates strict compliance and allows for no degree of discretion. I disagree and consider that the de minimus doctrine applies when interpreting Class B. Moreover, the Council is required to exercise discretion when taking enforcement action and to satisfy itself that enforcement is expedient and proportionate to the breach.
13. For the reasons given above, this ground of appeal succeeds and the enforcement notice is quashed. In these circumstances it is not necessary for me to consider the ground (f) appeal.

Formal Decision

14. The appeal is allowed and the enforcement notice is quashed.

Sandra Prail

INSPECTOR