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## Appeal Decisions

Site visit made on 7 February 2023

**by Stewart Glassar BSc (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23<sup>rd</sup> February 2023**

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### **Appeal A Ref: APP/Q1445/D/21/3288671**

#### **139 Kipling Avenue, Brighton BN2 6UF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
  - The appeal is made by Mr Alex Bateman against the decision of Brighton & Hove City Council.
  - The application Ref BH2021/03674, dated 13 October 2021, was refused by notice dated 8 December 2021.
  - The development proposed is described as an 'additional storey over the original footprint of the two-storey dwelling to create a three-storey dwelling.'
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### **Appeal B Ref: APP/Q1445/D/21/3288579**

#### **139 Kipling Avenue, Brighton BN2 6UF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
  - The appeal is made by Mr Alex Bateman against the decision of Brighton & Hove City Council.
  - The application Ref BH2021/02820, dated 24 July 2021, was refused by notice dated 12 October 2021.
  - The development proposed is described as an 'additional storey over the original footprint of the two-storey dwelling to create a three-storey dwelling.'
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### **Decision**

1. Appeal A is dismissed. Appeal B is dismissed.

### **Applications for costs**

2. Applications for costs were made by Mr Alex Bateman against Brighton & Hove City Council. These applications are the subject of separate decisions.

### **Background**

3. The appeals are made following the refusal of two applications for notification for 'prior approval' for the development described in the banner headings above. The appeals are alternative schemes for the dwelling and are mutually exclusive. Whilst they are different, both schemes involve raising the eaves and roof on the dwelling. The key differences were that Appeal A proposed a greater overall increase in the height of the building and Appeal B included a rear dormer.

4. The Council did not consider either scheme to be permitted development and in the case of Appeal A, considered there to be harm to the character and appearance of the building.
5. It was clear from my site visit that an extension almost identical to Appeal B has been implemented and largely completed.

### **Main Issues**

6. In light of the above, the main issue in each case is whether the proposals comply with the conditions, limitations and restrictions applicable to development permitted under Schedule 2, Part 1, Class AA of the GPDO. In the case of Appeal A, there is the further issue as to whether or not the proposed development adversely affects the character and appearance of the building.

### **Reasons**

7. With reference to my observations on site, works to extend the dwelling upwards have already taken place. Prior approval cannot be granted for development that has already begun, whether or not it is wholly or partially completed. This applies even if the development was begun after the application was made or during the appeal process.
8. Given the nature and extent of the works undertaken, I am satisfied that, as a matter of fact and degree, these works cannot be clearly severed from either of the appeal schemes.
9. As such, neither scheme would comply with Paragraph AA.3.(13) of Class AA, Part 1, Schedule 2 of the GPDO, which prohibits the commencement of development prior to receipt of a written notice giving prior approval. On this basis, neither appeal scheme therefore amounts to permitted development.
10. The question of whether, on its merits, prior approval should be given for Appeal A does not therefore arise and so there is no need for me to consider this issue.

### **Conclusion**

11. I therefore conclude that the appeals must be dismissed.

*Stewart Glassar*

INSPECTOR