



Appeal Decision

Site visit made on 6 June 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 JULY 2023

Appeal Ref: APP/Q1445/C/22/3303826

Land at 91 Southover Street, Brighton BN2 9UD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr David Edward Martin against an enforcement notice issued by Brighton & Hove City Council.
- The notice was issued on 28 June 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the alterations to the roof of the dwellinghouse to create a 'L' shaped dormer that extends below the eaves of the main roof and projects back from the rear wall of the dwelling.
- The requirements of the notice are: Remove the 'L' shaped dormer and re-instate the roof to match the design and materials of the roof prior to the alterations.
- The period for compliance with the requirements is: 6 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in sections 174(2)(a), (c), and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. The enforcement notice refers to Policy QD14 of the Brighton and Hove Local Plan and Policy DM 21 of the 'Proposed Submission Local Plan Part 2'. The main parties have confirmed Policy QD14 no longer forms part of the development plan and that the Brighton and Hove City Plan Part Two (2022) (CP2) has since been adopted. I have not therefore taken former Policy QD14 into account as part of my consideration of the ground (a) appeal and the deemed application for planning permission.
2. The appellant has suggested proposed alterations could be made to the alleged breach of planning control as part of their case in support of the appeal under grounds (a) and (f). Section 177(1)(a) of the Act provides that planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters.
3. Caselaw¹ directs that, so long as there is an appeal under ground (a), I must consider whether the proposed alternative scheme would be 'part of the matters' stated in the enforcement notice as constituting a breach of planning control and whether it should be permitted. Whether or not the proposed alternative scheme amounts to part of the matters, and may be permitted, is

¹ Ahmed v SSCLG & Hackney LBC [2014] EWCA Civ 566

for the planning judgement of the decision maker². I shall address these points in my reasoning relating to the ground (a) appeal and the deemed application for planning permission.

The ground (c) appeal

4. To be successful under this ground of appeal the appellant would need to demonstrate that the alleged breach of planning control stated in the enforcement notice does not constitute a breach of planning control.
5. It is not disputed by the appellant that the 'L' shaped dormer comprises development requiring planning permission. It is claimed that the development is authorised by Article 3 and Class B, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The onus is on the appellant to demonstrate the alleged breach of planning control is 'permitted development', on the balance of probabilities.
6. Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, subject to conditions and limitations. The 'L' shaped dormer has been constructed as a single building operation over the rear roof slope and a 2-storey flat roofed rear outrigger. It therefore comprises the enlargement of the appeal dwelling consisting of an addition to its roof – the rear roof slope and the flat roof of the outrigger. On the information before me³, the fact that the roof over the rear outrigger was flat before the development was carried out does not take the alleged breach of planning control outside the description of development permitted by Class B. It is not necessary for me to consider whether the development accords with Class A, as it falls wholly within the description of development permitted by Class B.
7. The appellant has explained how the 'L' shaped dormer accords with the limitations set out at Paragraph B.1(a) to (h) of Class B. Based on the information presented, I see no reason to find otherwise.
8. Paragraph B.2(b) of Class B states:

 '(b) the enlargement must be constructed so that—

 (i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension—

 (aa) the eaves of the original roof are maintained or reinstated; and

 (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; and

 (ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse'.
9. Article 2 of the GPDO clarifies that 'original' means, in relation to a building which is not Crown land, as it existed on 1 July 1948, or, if built on or after that

² R (oao Banghard) v Bedford BC [2017] EWHC 2391 (Admin)

³ Including the very limited details relating to appeal ref: APP/Q1445/X/18/3209802

date, as so built. The appeal dwelling is not Crown land. I have not been provided with information which clarifies when the appeal building was erected, but it would appear more likely than not that it was substantially completed before 1948.

10. If the appeal dwelling was constructed before 1 July 1948, and if the 2-storey rear outrigger existed at that time, the 2-storey rear outrigger would comprise part of the original building. If the 2-storey rear outrigger was a later addition, and was substantially completed after 1 July 1948, it would comprise an extension to the original building. The 2-storey rear outrigger appears to comprise part of the original building, but there is no evidence before me which confirms whether this is the case or not.
11. The appellant has referred to the alleged breach of planning control as 'an enlargement which joins the original roof to the roof of a rear extension'. However, there is no evidence which demonstrates, on the balance of probabilities, that the 2-storey rear outrigger is an extension to the original building, rather than part of the original building.
12. This is important, because the edge of the 'L' shaped dormer closest to the eaves of what the appellant is claiming to be the original roof is less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves, and the 'L' shaped dormer extends beyond the outside face of an external wall of what the appellant is referring to as the original dwellinghouse. This would be the case with most 'L' shaped dormers, and the GPDO makes an exception to permit such development where they join the original roof to the roof of a rear or side extension.
13. If the 2 storey rear outrigger comprises part of the original building, the 'L' shaped dormer would not accord with Paragraph B.2(b)(i)(bb) and B.2(b)(ii) of Class B. In the absence of sufficient evidence to demonstrate on the balance of probabilities that the 2-storey rear outrigger is an extension to the original building, I cannot confirm that the alleged breach of planning control is 'permitted development'. On the evidence available, it appears more likely than not that the rear outrigger is part of the original building.
14. I have been referred to text on page 36 of the relevant Technical Guidance⁴, which states:

'The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an 'L-shaped dormer' on a main roof and 'outrigger' or 'back addition' roof), whether the part of the house being extended forms part of the original house or is an enlargement, or the shape or level of the pitch of the roofs are different in relation to each other'.
15. There is no ambiguity when reading Paragraph B.2(b) alongside Article 2 of the GPDO and the text on page 36 of the Technical Guidance is not helpful with regard to the alleged breach of planning control in this particular case. On my reading of that text, it is seeking to clarify that a roof extension can comply with Class B if it would join the original roof to the roof of a non-original rear or side extension. It would be fair to say that in most cases that would create what is generally referred to as an 'L' shaped dormer on a main roof and an outrigger, as is the case here. I do not take that text of the Technical Guidance

⁴ Permitted development rights for householders by the Ministry of Housing, Communities & Local Government (September 2019)

as confirmation that an enlargement of a dwellinghouse consisting of an addition or alteration to its roof which joins an original roof to a non-original roof would accord with paragraph B.2(b) provided it would create an 'L' shaped dormer over a rear or side outrigger.

16. I have been referred to an appeal decision⁵ where a different Inspector found the same text in the Technical Guidance helpful when considering whether similar development at another property in Hove was lawful. In following the Technical Guidance, that Inspector opined that whether an outrigger comprises part of an original building or a later addition is immaterial for the purposes of applying Paragraph B.2(b).
17. My reasoning above is inconsistent with that Inspector's findings with regard to the specific circumstances of this particular case. This is because I find the legislation clear where it refers to an enlargement which joins part of the original building to an extension, with regard to Article 2 of the GPDO. The Technical Guidance does not have the same force as the legislation. As guidance, it is not determinative on matters where the legislation is clear. As I find no ambiguity in the wording of Paragraph B.2(b), I am not persuaded to reach a different conclusion on this matter by the other appeal decision I have been referred to.
18. It has not been demonstrated on the balance of probabilities that the 2-storey rear outrigger does not form part of the original building. I am therefore unable to confirm that the development accords with the conditions at Paragraph B.2(b) of Class B or that the development is authorised by Article 3 and Class B, Part 1 of Schedule 2 of the GPDO. I find that the 'L' shaped dormer is in breach of planning control.
19. The appeal under ground (c) fails.

The ground (a) appeal and the deemed application for planning permission

20. The main issue relevant to the consideration of the ground (a) appeal and the deemed application for planning permission is the impact of the development on the character and appearance of the area.

Reasons

21. Southover Street mainly comprises short rows of 2-storey terraced houses which back onto long rows of terraced houses. The appeal site is a mid-terrace house typical for the area, with rooms over 3 levels and a small courtyard to the rear. The rear of the appeal site faces towards a long strip of modestly sized neighbouring gardens which serve terraced houses on Jersey Street and Grove Street. The close arrangement of modestly sized terraced houses and gardens is a distinctive characteristic of the area.
22. The 'L' shaped dormer is confined to the rear elevation of the appeal dwelling and is only clearly seen in views from the rear of the long terraces and their gardens, and from a small part of the north-eastern end of Grove Street. Views from the north-eastern end of Grove Street are possible due to a conspicuous gap between 29A Grove Street and 90 Southover Street.

⁵ APP/Q1445/X/20/3252666

23. Very small parts of the 'L' shaped dormer can be seen from Southover Street, to the front of the appeal site. Those views are so restricted as to have no material impact on the character and appearance of Southover Street. The visual impact of the development is therefore limited to short-distance views from its rear and sides.
24. A wide 'L' shaped dormer roof extension appeared to be under construction at 28 Jersey Street during my site visit. I am not aware of the full circumstances relating to that development, but it is very close to the appeal site, perpendicular to the breach of planning control. Other than that development, all other dormer roof extensions I could see from the appeal site, and referred to by the main parties, appear to be confined to rear roof slopes rather than extending over outriggers. Dormer extensions over rear roof slopes, but not rear outriggers, appear to form part of the established character of the area.
25. Even in the presence of other dormer roof extensions, the breach of planning control is a prominent and oppressive feature when seen from the gardens of its closest rear neighbours and part of the north-eastern end of Grove Road. This is on account of the height and mass of the enlarged rear outrigger, which is now a 3-storey flat roofed projection with unattractive brown tile-hung elevations. It appears as an overly bulky addition to the appeal dwelling and is unsympathetic to the appeal dwelling's otherwise modest form. It is out of character with the restrained size and form of houses in the area and dominates the adjacent north-eastern end of terraces and gardens.
26. The ongoing development at 28 Jersey Street reduces the impact of the breach of planning control on the character and appearance of the area to some extent, on account of its similarly excessive scale. However, even when experienced in the context of that development, the 'L' shaped dormer has the appearance of an awkward and uncharacteristically large extension at roof level. Its projection at third floor level beyond the stepped form of 90 Southover Street is inconsistent with that neighbouring building.
27. The 'L' shaped dormer therefore has a harmful impact on the character and appearance of the area, which is appreciated from a limited number of viewpoints within houses and gardens along Jersey Street and Grove Street and from a small part of the highway at the north-eastern end of Grove Street. As it is experienced from only a small number of viewpoints alongside the roof extension at 28 Jersey Street, its impact on the character and appearance of the area is low. However, it remains in conflict with Policy DM21 of the CP2. This explains that planning permission will be granted for extensions which are well designed, scaled, and detailed in relation to the existing property and the surrounding area, which take account of the existing character of the area, and which use materials that complement the parent building.
28. The appellant has suggested that the development could be made acceptable through proposed alterations. Firstly, it is proposed that a white rendered finish could be applied to the rear and side elevations of the part of the development over the rear outrigger, to match the rest of that projection, and that the brown tile-hung finish of the rest of the dormer on the rear roof slope could be finished with slate tiles instead. Secondly, in the alternative and presented as part of the ground (f) appeal, it is suggested that the part of the dormer over the rear roof slope could be retained following the demolition of the part which projects over the rear outrigger.

29. The proposed alterations to the finish of the 'L' shaped dormer would certainly improve its appearance, but they would not sufficiently mitigate the impact of the scale and mass of the development, which are excessive for its location. These proposed alterations would not significantly improve the overall design of the development or make it acceptable with regard to Policy DM21 for the same reasons set out above.
30. Demolition of the part of the 'L' shaped dormer above the rear outrigger would leave a dormer extension confined to the rear roof slope of the appeal dwelling. That would be more consistent with examples of other dormer extensions seen in the local area. On account of the high number of other dormer extensions of similar sizes on rear roof slopes, such an alteration would create a dormer extension which would not harm the character or appearance of the area.
31. However, my power to grant planning permission under the ground (a) and (f) appeals and the deemed application for planning permission only extends to development which is part of the matters comprising the breach of planning control. In this case, the proposed alterations would necessitate further development to erect a new rear elevation to part of the dormer extension over the rear roof slope. I do not therefore consider that the part of the 'L' shaped dormer above the rear outrigger is severable from the part of the 'L' shaped dormer above the rear roof slope. It was erected as a single building operation and the proposed alterations would create a different form of dormer extension.
32. Caselaw⁶ has recognised that virtually any alternative scheme is likely to involve at least some element of new work. Even with this in mind, I remain unconvinced that the proposed alterations to the 'L' shaped dormer would be within the scope of the matters stated in the enforcement notice. As such, I have no power to grant planning permission for that development as part of the ground (a) and/or (f) appeal, or the deemed application for planning permission.
33. The appeal under ground (a) therefore fails and the deemed application for planning permission is refused.

The ground (f) appeal

34. To succeed under this ground of appeal the appellant would need to demonstrate that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
35. The notice requires the L-shaped dormer to be removed and the roof of the appeal dwelling to be reinstated to match the design and materials of the roof prior to the breach being carried out. The purpose of the notice is therefore to remedy the breach of planning control, rather than any injury to amenity.
36. Requiring the land to be restored to its condition before the breach took place is not excessive to achieve this purpose. That is the case even if a different dormer could be erected on the rear roof slope of the appeal dwelling without the need for express planning permission under the provisions of the GPDO.
37. The appeal under ground (f) must therefore fail.

⁶ Bhandal v SSHCLG & Bromsgrove DC [2020] EWHC 2724 (Admin)

Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

39. It is directed that the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Douglas

INSPECTOR