



Appeal Decision

by Diane Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2019

Appeal Ref: APP/Q1445/X/17/3192323

22 Middleton Avenue, Hove BN3 4PJ

- 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 Andrew Harmer against the decision of Brighton & Hove City Council.
 - The application, Ref BH2017/02609, dated 1 August 2017, was refused by notice dated 31 October 2017.
 - 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 described as proposed roof alterations comprising hip to gable extension and rear dormer extension.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Section 192(2) of the Town and Country Planning Act 1990 (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. Applying the terms of s192(2) of the Act to the appeal proposal, the Council has determined the application against the provisions set out in Schedule 2, Part 1, Classes A, B, C and G of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).

Reasons

3. The appeal relates to a semi-detached house. The appellant proposes to enlarge the main roof area to provide a loft room and an additional bathroom. This would involve changing the side of the roof from a hip shape to a half hip shape as well as the addition of a rear dormer and front roof lights. The Council advise that the site does not lie within a conservation area and there are no Article 4 Directions covering the area.
4. The principle point at issue is the Council's determination that as a result of the works part of the house would extend beyond the plane of an existing roof slope which forms the principal elevation of the house and which fronts the

highway. The Council accepts that, in all other respects, the proposed development would accord with the limitations set out in Classes A, B, C and G of the GPDO and I see no reason to take a different view.

5. The appellant's drawings show that the house has a staggered frontage overlooking the highway. The principal elevation therefore includes more than one roof slope facing in the same direction. In this case the principal elevation not only includes the wall of the lounge/master bedroom but also the wall of the hot water cylinder (HWC) cupboard next to the third bedroom. As such, the principal roof slopes are the forward facing main roof and the roof over the third bedroom/HWC cupboard. The new roof would extend in front of the forward facing roof plane over the third bedroom/HWC cupboard and, as such, I consider the development would not be permitted development (PD). This is because the wording in paragraph B.1(c) of the GPDO states that development is not permitted by Class B if *any* (my emphasis) part of the house would, as a result of the works, extend beyond the plane of *any* existing roof slope which forms the principal elevation of the house and fronts a highway.
6. The Department for Communities and Local Government published 'Permitted development rights for householders, Technical Guidance' (TG) in April 2017. It provides an explanation of the rules on PD for householders, what these mean and how they should be applied in particular sets of circumstances. It sets out (pages 34 and 35) 'The principal elevation could include more than one roof slope facing in the same direction. For example, where there are large bay windows on the front elevation, or where there is an 'L' shaped frontage. In such cases, *all such roof slopes will form the principal elevation* and the line for determining what constitutes 'extends beyond the plane of any existing roof slope' will follow these slopes'. I find that the Council's approach to determining this application reflects this guidance.
7. The appellant submits the third bedroom/HWC cupboard is set back almost 5m from the lounge/master bedroom wall and only has a width of 2m. It is obscured by the mono pitch roof of the garage and the external finish matches the side wall of the house, not the front lounge/master bedroom wall. As such, it is a secondary feature and does not form part of the principal elevation. This conclusion is reached following an analysis of the second diagram on page 15 of the TG. However, it is my view that this diagram and the one above have been included for illustrative purposes only and are not drawn to scale. Moreover, they are there to illustrate the text in the TG which in turn has been provided to give an explanation of the rules on PD. There is nothing within the wording of the GPDO itself which lends support to the appellant's argument or to his interpretation of the GPDO. Furthermore, the determination as to whether the development is lawful or not is made on a plain reading of the legislation itself and not any accompanying guidance, which only assists with understanding the rules.
8. To summarise, whilst the proposed development would accord with the majority of the limitations set out in Classes A, B, C and G of the GPDO, it would not comply with paragraph B.1(c). Overall therefore the proposed extension would not benefit from the PD set out in Schedule 2, Part 1, Class B of the GPDO.

Conclusion

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 proposed roof alterations, comprising a hip to gable extension and a rear dormer extension, 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.

D Fleming

INSPECTOR

