The Planning Inspectorate

Appeal Decision

Site visit made on 19 November 2012

by Bridget M Campbell BA(Hons) MRTPI

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

Decision date: 27 November 2012

Appeal Ref: APP/Q1445/X/12/2169949
115 Carden Hill, Brighton BN1 8DA

- 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 G Guttierez against the decision of Brighton & Hove City Council.
- The application Ref BH2011/02708, dated 6 September 2011, was refused by notice dated 11 November 2011.
- The application was made under section 191(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 a parking area to an existing dwelling.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr G Guttierez against the Council. This application is the subject of a separate decision.

Reasons

3. The application is to ascertain whether the work carried out to form on off street parking area at the appeal property, which the application form indicates was completed in about June 2010, was lawful on the date of the application. In this case to be lawful, the work must either not amount to development within the meaning of s55 of the Act or, if it does comprise development, then planning permission must have been granted for it.

4. Section 55 of the Act says development includes the carrying out of building, engineering, mining or other operations in, on, over or under land. The work involved to form the parking area included raising the level of part of the front garden by a considerable amount using infill material, the maintenance of that new level through the construction of retaining walls, and the provision of a gravel surface. There is no argument made that the work undertaken does not comprise development. Having regard to the substance of the operations involved I concur. The provision of the parking area comprised development within the meaning of s55 of the Act for which, s57 says, planning permission is required.

5. Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO) grants planning permission for classes of

development described as permitted development in Schedule 2 to the Order. Class F of Part 1 describes as permitted development the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such. Thus a gravel surface (which would be porous and so comply with the condition attached to the permission granted) used for car parking would be permitted by way of Class F of Part 1. However, in this case the works that have been carried out go well beyond the simple provision of a hard surface. They involved substantial work to raise the previous terraced levels of the front garden to one uniform ground level using infill material and retaining walls. Those are engineering operations which are significant in scale and exceed the works that could reasonably be regarded as incidental to the provision of a hard surface as allowed by way of Class F.

6. Similarly, it cannot be said, as the Appellant argues, that the development is permitted by way of Class A of Part 2 of Schedule 2. Whilst that permits the erection of fences, walls or other means of enclosure, the one development here for which planning permission is required involves far more than the erection of walls. The walls are part and parcel of a much larger discrete operation which comprises one overall piece of operational development. It is not possible to separate out parts of the development and suggest that those parts are permitted by way of the GPDO. Either the whole development is permitted by the GPDO or it is not. This follows the line taken in *Garland v MHLG* (1968) 20 P & CR 93[1] that if the whole operation is not permitted then neither is any part of it. The whole development would need to benefit from the permission granted by the GPDO for it to be lawful.

7. As a matter of fact and degree I find the works that have been undertaken take the development beyond that which is permitted by way of Class F of Part 1 of Schedule 2 and beyond that permitted by way of Class A of Part 2 of the Schedule. Nor is the development permitted by any other Class. I conclude that the work undertaken comprises development within the meaning of s55 of the Act and that permission for it has not been granted either expressly or by way of the permission granted by Article 3 of the GPDO. It was not, therefore, lawful at the date of the application.

8. The photographs of other raised parking areas in the vicinity do not assist in the determination of this appeal because determination as to whether planning permission is required for the appeal development is a matter of law.

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 a parking area to the existing dwelling was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Bridget M Campbell

Inspector

[1] See Encyclopedia of Planning Law and Practice 3B-2070.1 (also set out in the extract from 'Permitted Development – Second Edition' by Malcolm Grant submitted by the Appellant)