



Appeal Decision

Site Inspection on 15 January 2014

by **Graham Self MA MSc FRTPI**

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

Decision date: 23 January 2014

Appeal Reference: APP/Q1445/X/13/2205993

Site at: 16 Mayfield Crescent, Brighton BN1 8HQ

- The appeal is made by Mr Adam Hughes under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against the refusal by Brighton and Hove City Council to grant a certificate of lawfulness.
- The application (Reference No. BH2013/02384) dated 5 July 2013 was refused on 18 September 2013.
- The application was made under Section 192 of the Town and Country Planning Act 1990 as amended.
- The application sought a certificate of lawfulness for: "single storey rear extension".

Summary of Decision: The appeal fails.

Procedural Matter - Application Date

1. The application date quoted in the summary details above is the date specified in the application. The date stated in the council's decision notice and in the appeal form appears to be the date the application was received by the council.

Reasons

2. The main point of dispute in this case concerns the interpretation of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the "GPDO"). Taken together with Article 3 of the GPDO, this legislation grants planning permission for the enlargement of a dwellinghouse, subject to numerous provisos and limitations.
3. The proposed extension would meet most of the criteria set out in Class A. For example, such matters as height, area covered, extent of projection from the house and finishing materials would all be within GPDO limits. However, one of the provisos in the GPDO is as follows (text which is not relevant is omitted):

"Development is not permitted by Class A if... the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would...have a width greater than half the width of the original dwellinghouse."
4. There is no dispute that the extension would have a width greater than half the width of the original house. The appellant contends that the enlarged part of the

house would not extend beyond a wall forming a side elevation of the house. The council disagree.

5. The house at the appeal site has a rear projection so that the rear of the house has a "stepped" or "L" shape. That was evidently how the house was originally built. The extent of the projection (a little under 0.7 metres) is quite small, but is more than minimal. In this situation, the "inner" side wall of the projection is "a wall forming a side elevation of the original dwellinghouse". The proposed extension would extend sideways beyond this side wall. Therefore the criterion quoted in paragraph 3 above would not be met.
6. Both the appellant and the council have referred to Technical Guidance published by the government. The guidance states: "A wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall". As Mr Hughes rightly points out, such guidance is only guidance. Indeed, the guidance has not always provided a correct interpretation of the law as set out in the GPDO, which ultimately is a matter for the courts. However, unless and until the definition in the guidance is held to be incorrect by the courts it is appropriate to give it weight. The side wall of the rear projection is at a 90 degree angle to the rear wall of the house and cannot be regarded as part of the rear wall of the house as suggested by Mr Hughes.
7. I note that the proposal has been through the "larger home extension" prior notification process with no objections from neighbouring occupiers, and that planning permission has been granted for full-width rear extensions at other properties nearby. These points do not affect the issue of how the GPDO should be interpreted. I also note Mr Hughes' comments about other appeal decisions, but these were decided before the current version of the government's Technical Guidance was issued.
8. Part of the appellant's case is that a different scheme built using permitted development rights would be worse than the appeal proposal. Mr Hughes also points out that it would be possible to demolish an original back projection and build a new, wider one under permitted development rights, and that this is an example of "clearly untenable situations". What I think Mr Hughes is really arguing is that there are anomalies and quirks in the GPDO. The fact remains that this appeal has to be decided by reference to current legislation.

Formal Decision

9. For the reasons given above I conclude that the council's refusal to grant a certificate of lawfulness for a proposed single storey rear extension, in respect of the application (Reference No. BH2013/02384) dated 5 July 2013, was well founded. I therefore dismiss the appeal.

G F Self

Inspector