The Planning Inspectorate

Appeal Decision

Site visit made on 24 May 2018

by D E Morden MRTPI

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

Decision date: 14 August 2018

Appeal Ref: APP/Q1445/X/17/3176838
60 Lynton Street, Brighton, BN2 9XR

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr D Harrison against Brighton & Hove City Council.
- The application (Ref.BH2017/00951) is dated 19 March 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 the addition of a dormer to the rear roof pitch and roof lights to the front roof pitch.

Decision: The appeal is dismissed.

Application for costs

1. An application for costs was made by Mr D Harrison against Brighton and Hove City Council. This application is the subject of a separate Decision.

Preliminary Matters

2. The Council confirmed that it had no objection to the roof lights to be installed on the front roof pitch and was content that they were 'permitted development' not requiring formal planning permission by virtue of Class C of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). I agree that the roof lights meet all the requirements and conditions of Class C and do not require formal planning permission.

3. The Council belatedly issued a refusal notice on the application (although I will deal with this appeal as a non-determination as that decision is of no effect, the appeal having already been made) and it set out two matters that the Council considered stopped the proposal from being permitted development.

Reasoning

4. The Council's argument was that firstly, the extension would not be wholly within the curtilage of the appeal property and permitted development rights only apply to development within the curtilage of a dwelling house. Secondly, it would not comply with condition B.2,(b) of Class B of the GPDO which requires the edge of any enlargement to the roof, so far as is practical, to be not less than 0.2m from the original eaves when measured along the new roof slope.

5. Dealing firstly with the issue concerning the measurement to the original eaves, The Council stated that the plans that were submitted with the application were inaccurate in their depiction of the eaves. The appellant accepted this and included amended sections with the amended appeal statement (amended to take account of a reason for refusal that the Council included in its purported decision notice). The Council argued that the amended plans still did not show 200mm from the edge of the original roof eaves to the front face of the new dormer.

6. The appellant argued that scaling from drawings was prone to inaccuracy and critical dimensions were given as figures on the drawing which removed the need to scale. The only problem with that is that that any figure can be put down on the drawing. The plans are at a scale of 1:50 which is large enough to scale accurately from and there is also a scale on the drawing itself that can be used so that if there has been any stretching or shrinking in the reproduction it will be the same for both the scale and the drawing. Further, as often occurs with critical details and measurements when dealing with listed buildings, drawings can to be produced at 1:20 or even 1:10. That has not occurred here.

7. The original plans included an 'existing section' that showed the eaves on both the front and back of the house the same size (which is what one would expect). On the amended plan submitted with the appellant's final comments (which unfortunately has exactly the same plan number as the original plan) the 'existing section' showed the eaves at the rear to be almost non-existent. In the written representations it stated that the eaves on the rear of the house was the same as on the projecting two storey rear extension; on the original plan that was the same as the front and rear eaves on the original plan and it was still shown that way on the amended plan.

8. The statements and plans are, in my view, contradictory; it is not clear from the information provided whether or not the proposal satisfies the requirements of the GPDO (and would therefore be permitted development). Further, I agree with the Council that the amended plan does not show 200mm from the edge of the eaves to the proposed dormer. Even allowing for some inaccuracy in the reproduction of the plans at the scale that is submitted it is clearly not 200mm. As I stated earlier a much larger scale plan (either 1:20 or 1:10) is possibly necessary to show accurately what the existing measurements are and what are proposed.

9. For the reasons set out above I am not satisfied that the appellant has demonstrated that the proposed dormer satisfies all the relevant criteria and or conditions necessary for the proposed dormer to be 'permitted development' not requiring formal planning permission and I shall dismiss this appeal.

10. Turning to the second main issue – whether the proposal to erect the side wall of the dormer on the party wall is within the curtilage and can therefore be considered 'permitted development' – the Council asserted that the proposal involved development not within the curtilage of the property and it could not therefore be 'permitted development'. The parties both referred to several appeal decisions that had dealt with this question and both stated that there were no Court judgements that set out how this matter ought to be approached. Those decisions concerned appeals from 2001, 2009 and 2010 that decided that such development was within the curtilage and a decision

from 2016 that decided it was not. I am also aware of a decision from 2006 not referred to by the parties that decided that such development was not within the curtilage (APP/T5150/C/05/2004639).

11. Whilst there are decisions going both ways on this matter, it is clear that only the three that concluded that the development was/would be within the curtilage had examined court decisions to try to find any guidance on the matter. That is necessary as curtilage is not defined anywhere in the planning acts or the GPDO. I won't repeat the details of those court decisions here as both parties are well aware of the outcomes and the 2001 and 2009 decisions were similarly dealing with dormer extensions.

12. The inspector in the 2009 decision (APP/U5090/X/09/2108111) at paragraph 7 summed up the situation referring to the 2001 inspector's decision who had cited, in particular, *McAlpine v SSE [1995] 1 PLR 16* which decided that a curtilage comprised three defining characteristics. Firstly it occupied a small area around a building; secondly, it was intimately associated with that building and thirdly, it had to be regarded as one part of an enclosure with the house concerned.

13. Both inspectors agreed that where party walls are concerned, adjoining curtilages could, as McAlpine decided, overlap each other (in some situations one completely surrounds another). This was particularly relevant in a party wall situation where the result could be the collapse or partial collapse of both if the wall were removed. The party wall was such an integral part of the two dwellings there was no reason why their curtilages could not overlap because such small areas were involved. The inspector in the 2010 decision agreed with that and I see no reasons that would make me come to a different conclusion (APP/U5930/X/10/2132832). As with the 2010 inspector (at paragraph 6 of his decision) there is still the need for access rights to carry out such works which is covered by other legislation; any permission granted under the planning acts does not give anyone the right to carry out the approved development on land not in their ownership.

Conclusions

14. Whilst I have decided that the development would be within the curtilage of the appeal property, the appeal still fails on the first issue as it is not clear at all from the information provided that the proposed development meets all the restrictions and conditions of Class B of the GPDO and I shall, therefore, dismiss this appeal.

D E Morden

INSPECTOR