
Appeal Decision

Site visit made on 17 July 2015

by D Whipps LLB Solicitor LARTPI

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

Decision date: 10 September 2015

Appeal ref: APP/Q1445/X/14/2224578

39 Graham Avenue, Portslade, East Sussex, BN41 2WN

- 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 Dean Weller against the decision of the Brighton & Hove City Council.
- The application Ref BH2014/01923 dated 6 June 2014 was refused by notice dated 13 August 2014.
- 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 the erection of roof conversion with side dormers, rear gable (including proposed revisions to front fascia line).

Decision: The appeal is dismissed.

Preliminary matters

1. The application was both submitted and determined at a time when the Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO 1995) was in force. Whilst this Order has now been replaced, with effect from 15 April 2015, by the Town and Country Planning (General Permitted Development) Order 2015, I have to decide whether the proposed development would have been lawful at the time of the application to the Council and whether the Council's decision to subsequently refuse the application was well-founded. I shall, therefore, consider the matter in the light of the GPDO 1995.
2. It should also be noted that the application to the Council for a Certificate of Lawfulness was in respect of existing as opposed to proposed operations. It was made under S191(1)(b) of the Act and not under S192(1)(b) of the Act which is concerned with proposed alterations. The appeal has to be determined on the same basis, i.e., I have to consider whether what actually existed at the time of the application to the Council was lawful. It is not open to me under this appeal to consider what could be lawful.

Reasons

3. The appellant has installed 2 side dormers at 39 Graham Avenue, Portslade. Class B Part 1 Schedule 2 of the GPDO permits the enlargement of a

dwellinghouse consisting of an addition or alteration to its roof but subject to both limitations and conditions.

4. One limitation (Class B.1(a)) is that the development is not permitted if any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof. The Council say that this limitation has not been met.
5. The Council assert that the height of the dormers as built exceeds the original height of the roof of the property. However, the appellant says that during construction a temporary template of the original roof was made so as to ensure that the overall construction did not exceed the height of the original ridge. It is suggested by the Council that it is apparent upon inspection of the works that a significant proportion of the roofs of the dormers protrude above the height of the ridge tiles of the original roof.
6. The appellant was clearly conscious of the need to ensure that the dormers did not exceed the height of the existing ridge. It was not either apparent to me on my site visit that the actual roof of the dormers exceeded the original height. I am, therefore, satisfied that on the balance of probabilities, having regard to the representations, and from what I saw at my site inspection, that the appellant has proven that the main part of the roof of the dormers do not exceed the height of the ridge that existed prior to the 2 dormers being installed.
7. However, the appellant has placed a tilting fillet on the sides of the 2 dormers facing the front of the property. This tilting fillet is shown on drawing number 457/03 and it clearly extends above the top of the original ridge of the roof. A part of the dwelling, as a result, exceeds the height of the highest part of the original roof. The limitation in Class B(1)(a) is not satisfied. I appreciate that the appellant wishes to rectify the position but as mentioned I have to determine this appeal on the basis of what has been constructed to date.
8. A further limitation (Class B1(b)) is that development is not either permitted if any part of the dwellinghouse as a result of the works, extends beyond the plain of an existing roof slope which forms the principal elevation of the development and fronts a highway. The appellant acknowledges that a small element of the flat roof of the dormer projects a short distance beyond the front apex of the original roof. This is also clearly shown on drawing number 457/03. As I saw on my site visit, this is a principal elevation of the property and it fronts a highway. The works as undertaken, therefore, do extend beyond the plain of an existing roof slope which form the principal elevation of the development and fronts a highway. The limitation within Class B1(b) is not, therefore, met. Again, as mentioned, it is not open to me to consider the appellant's remedial proposal.
9. It has not been suggested that any of the other limitations and/or conditions to Class B are breached and I find no reason to suggest otherwise. However, the position remains that what has been constructed fails to meet 2 of the limitations within Class B Part 1 Schedule 2 of the GPDO. The existing dormers are not, therefore, permitted development.

Conclusions

10. For the reasons give above, I conclude that the Council's refusal to grant a Certificate of Lawful Use of Development in respect of a roof conversion with side dormers, rear gable (including proposed revisions to front facia line) was well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in S195(3) of the 1990 Act as amended.

Formal decision

11. The appeal is dismissed.

D Whipps

INSPECTOR

