The Planning Inspectorate

Appeal Decision

Site visit made on 28 February 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 22 March 2019

Appeal Ref : APP/Q1445/X/18/3209999
Land at 76 Barcombe Road, Brighton, BN1 9JR.

- 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 lawful development certificate (LDC) by Brighton & Hove City Council dated 13 July 2018.
- The appeal is made by Mr Simon Timpson.
- The application ref. BH2018/01089 was dated 2 April 2018.
- The application was made under section 192 (1) (b) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is (proposed) loft conversion and new two storey rear extension, 2no rear dormers and insertion of 7 no rooflights.

Summary of Decision: the appeal is dismissed

Preliminary Matter

1. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

3. The appeal site is a two storey end of terrace property in a primarily residential area. The application the subject of this appeal is a proposed loft conversion and new two storey rear extension, 2no rear dormers and insertion of 7 no rooflights.

4. Planning permission is granted by virtue of permitted development rights for certain types of development subject to specified conditions and limitations. Class A of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO) concerns the enlargement, improvement or other alteration of a dwellinghouse. Class A.1(i) provides that development is not permitted by

Class A if the enlarged part of the dwelinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse and the height of the eaves of the enlarged part would exceed 3 metres. Class A.1 (d) provides that development is not permitted by Class A if the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse. The point in dispute between the parties is whether these limitations are met on the facts. There is no disagreement that in all other respects Class A is met and I have no reason to conclude otherwise.

5. The Council has used Land Registry plans to take measurements of the side boundary of the site. The Appellant argues that the Land Registry plans are not determinative as to the precise boundary and that in this case as he also owns the neighbouring property no 75 the boundary line is as shown on the plans submitted with the application. There is no dispute that if the Appellant's boundary line is used that Class A.1 (i) is met and if the Land Registry line is taken that Class A.1 (i) is not met.

6. The Appellant claims that the precise boundary line differs from that shown on the Land Registry plans. I agree that Land Registry plans shows general boundary lines and are not definite as to the precise position of boundaries. But the onus of proof rests firmly on the Appellant in this appeal. His assertion by referring to a line on the application plans which is different to the Land Registry plans does not enable me to conclude on a balance of probability that the boundary line is as the Appellant claims. Without supporting evidence as to the precise boundary line he has not discharged the burden of proof that rests on him in this appeal. I therefore cannot conclude on the evidence before me that Class A.1(i) is met. It follows that permitted development rights cannot be relied upon and planning permission is required.

7. Non-compliance with any aspect of Class A means that the development is not permitted by Class A. It is not therefore necessary for me to determine whether Class A.1 (d) is met and I do not see there is any useful purpose in me doing so. This is a simple matter of fact based on the submitted drawings on which the parties should be able to agree.

8. The Council also argues that as the proposed works would be part and parcel of wider development to change the use of the property to a large HMO (sui generis) that they require permission as part of an overall change of use. But there is insufficient evidence before me to conclude that the operational works the subject of the notice solely facilitate a change of use. In any event a determination on this issue would not alter my conclusion above that planning permission is needed for the development the subject of this appeal.

9. For the reasons given above I conclude, on the evidence now available that the Council's refusal to grant a certificate of lawful use or development in respect of (proposed) loft conversion and new two storey rear extension, 2no rear dormers and insertion of 7 no rooflights at 76 Barcombe Road, Brighton, BN1 9JR was well-founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

10. The appeal is dismissed.

S.Prail

Inspector