



Appeal Decision

Site visit on 24 November 2010

by Graham Self MA MSc FRTPI

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

Decision date: 6 December 2010

Appeal Ref: APP/Q1445/A/10/2128998

Land at 1-2 Newbarn Cottages, Foredown Road, Portslade, Brighton BN41 2GB

- The appeal is by Mr A R Uridge. It is made under Section 78 of the Town and Country planning Act 1990, against the grant of planning permission subject to conditions by Brighton and Hove City Council (see paragraph 1 below).
- The proposed development was described in the application as: "Conversion of two semi-detached cottages into single family dwelling together with the extension and alterations to both cottages".
- The condition in dispute is No 3 of those attached to the permission, which states:

"Notwithstanding the details of the proposed rear elevation as indicated on drawing no 2121/09/01, the proposed first floor gallery window shall be reduced in size, details of which shall be submitted to and approved in writing by the Local Planning Authority prior to any works commencing on site. The works shall be implemented in strict accordance with the agreed details and maintained as such thereafter."

Legal Matters

1. Before considering the appeal it is necessary for me to deal with two legal matters.
2. First, in the form lodging the appeal, the appellant's agent has indicated that the appeal is against a decision by the local planning authority to refuse permission to vary a condition. That is not correct. As noted in the summary above, the appeal is against the planning authority's decision to *grant* permission subject to conditions (not to *refuse* a permission). Specifically, the appeal is under Section 78(1)(a) of the 1990 Act, not under either Section 73 or 73A. The appeal cannot be against a decision to refuse an application for permission to vary a condition (this is the type of appeal to which Sections 73 and 73A apply) because in this instance no such application has been made.¹
3. Second, in part of their written submission (the planning officer's report) the City Council say that the conversion of two properties into a single dwellinghouse "is not usually considered a material change of use and is therefore not classed as 'development' as specified in Part III, Section 55 of the

¹ This error may have occurred partly because the appeal was lodged using a "Householder Planning Appeal" form. Although the appeal was accepted by the Inspectorate as valid, it should have been made using the standard "Planning Appeal" form, which (unlike the Householder Appeal form) includes in Section F the option to specify that the appeal is against the planning authority's decision to grant planning permission for development subject to conditions to which the appellant objects.

Town and Country Planning Act 1990". The council here appear to be referring to the fact that the existing cottages are both "dwellinghouses" within the meaning of the 1990 Act, and so their use would fall within Class C3 of the Use Classes Order. The proposed house would also be within Class C3. So it might be thought that the change from two dwellinghouses to a single dwellinghouse would not constitute "development", by virtue of Section 55(2)(f) of the Act.

4. The legal position is rather more complicated than that, because the proposal would involve a change of "planning unit", and even allowing for the provisions of the Use Classes Order, it is necessary to make a "before and after" comparison of the planning unit or units to decide whether a material change of use is involved, and a change from two dwellings to one might be judged to be a material change.
5. The two matters mentioned above are relevant because the appeal against the conditional permission has put the whole permission at risk (a point which I suspect has not been realised by the appellant or his agent); and I have reservations about the original permission, especially in view of the objections and concerns expressed by the South Downs Joint Committee and the South Downs Society. The loss of two small dwellings could have planning consequences and affect the character of the area, having regard to what the local plan refers to as the "sense of history" of the South Downs. However, as the City Council have not opposed the general principle of the development or the scale of the proposed extension, I have decided on balance that it would not be appropriate to widen the matters of dispute at this stage. Therefore I shall confine my consideration to Condition 3 and the disputed window.

Reasons

6. The central issue is whether the large window in the north elevation of the proposed extension would be acceptable, taking account of relevant planning policies.
7. The appellant claims that the disputed window would be "wholly obscured from public view". That claim is not correct - the window would be visible from the nearby public right of way which passes close to the existing cottages. The window would be a significant feature in the north elevation of the extended property and would not be characteristic of rural cottages in this locality, so would draw attention to the fact that the property had become one large house.
8. On the other hand, given the council's lack of objection to the property being enlarged, the objections to the window on grounds of design or appearance (and related policies of the local plan) are weak. The window would be an integral part of the design of the extension, as it would provide light to the full-height entrance hall. The window would not materially harm the natural beauty of the area.
9. It is difficult to see how the window would enhance the visual or landscape quality of the South Downs - and a requirement to "enhance" is part of policy NC7 of the local plan. But it is equally difficult to see how the extension as a whole would achieve such enhancement, and that has not caused the local planning authority to refuse permission for the extension. Indeed, when granting permission for the development the council stated that the proposal "would not cause harm" to the visual or landscape quality of the national park,

and so was considered to be in accordance with development plan policies. If the local authority do not consider it appropriate to ensure compliance with their policy requirement to "enhance", it would seem unduly strict for me to impose such a requirement.

10. In summary, both sides have put forward weak cases based on some flawed arguments. Bearing in mind all the points discussed above, I have concluded that the window would be marginally acceptable. Therefore I have decided to grant permission for the proposed development without complying with Condition 3, so the appeal succeeds.

Costs

11. An application has been made on behalf of the appellant for an award of costs against the City Council. This application is the subject of a separate decision.

Decision

12. I allow the appeal and vary the planning permission issued by Brighton City Council on 13 April 2010 (reference BH2010/00160) for the conversion of two semi-detached cottages into a single family dwelling, together with the extension and alterations to both cottages, at 1-2 Newbarn Cottages, Foredown Road, Portslade, Brighton BN41 2GB. The permission is hereby varied by the deletion of Condition 3. All the other conditions remain in force.

G F Self

Inspector

