The Planning Inspectorate

Appeal Decision

Site visit made on 15 October 2013

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 8 November 2013

Appeal Ref: APP/Q1445/X/12/2184113
11 Hangleton Gardens, Hove, East Sussex BN3 8AB

- 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 Miss Azaria Munro against the decision of Brighton & Hove City Council.
- The application ref no BH2012/02238, dated 16 July 2012, was refused by notice dated 31 August 2012.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The existing development for which a LDC is sought is the erection of a dormer at the rear.

Summary of Decision: The appeal is dismissed.

The Property and the Development

1. The appeal property as originally built was a two storey semi-detached dwellinghouse with a hipped roof. It was subsequently enlarged by means of single storey additions at the rear and a two storey side extension with a hipped roof. On the evidence before me, second floor accommodation was then created within the extended roof, served by rooflights, in 2004.

2. The development for which a LDC is sought is a further addition, comprising a flat roofed dormer window which has been inserted into the rear roof slope and enlarges the second floor accommodation. This extends across the property's original roof and also part of the roof of the two storey side extension.

Reasoning

3. The Appellant contends that the erection of the rear dormer is lawful by reason of the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO). Schedule 2 to the GPDO defines various categories of permitted development which, by reason of Article 3, benefit from deemed planning permission. Class B of Part 1 of Schedule 2 defines as permitted development the enlargement of a dwellinghouse consisting of an addition to its roof, subject to various limitations and conditions.

4. Limitation B.1(c) specifies that development is not permitted by Class B if the cubic content of the 'resulting roof space' would exceed the cubic content of the 'original roof space' by more than 50 cubic metres (in the case of a semi-

detached house). Article 1(2) of the GPDO specifies that the term 'original' means, in relation to a building (other than on Crown land) existing on 1 July 1948, as existing on that date and, in relation to a building built after that date, as so built.

5. The Appellant asserts that the cubic capacity of the dormer is 17.39 cubic metres and that the area of extended roof directly above the original dwelling is 16.85 cubic metres, giving a total of 34.24 cubic metres. He further advises that the hipped roof directly above the two storey side extension has a cubic capacity of 18.3 cubic metres such that, if this were to be included in the overall enlargement of the original roof space for the purposes of Class B, the 50 cubic metres tolerance would be exceeded by 2.54 cubic metres.

6. The Council has calculated a slightly smaller excess beyond the 50 cubic metres threshold of only 1.41 cubic metres, resulting from a dormer volume of 18.35 cubic metres, an extended roof directly above the original dwelling of 16.53 cubic metres and a side extension roof volume also of 16.53 cubic metres. I note that, for the purposes of the Appellant's calculations, 'as built' measurements were verified on site whereas, in the absence of evidence to the contrary, I assume the Council to have worked from drawings.

7. I cannot be certain which set of measurements/calculations is the more accurate. However:
   - both parties are agreed that the roof additions as a whole exceed 50 cubic metres in volume; and
   - the point of contention between them is whether or not the roof of the two storey side extension should be included in the calculation of the difference between the 'resulting roof space' and the 'original roof space' for the purposes of applying Class B.

   I have no reason to take issue with the first bullet point. My decision as to lawfulness hinges on the correct interpretation of the matter of law summarised in the second bullet point. Consequently, there is no need for me to resolve the discrepancies in calculation that have arisen between the parties in order to determine the appeal.

8. The Appellant presents an argument to the effect that, for the purposes of applying Class B, the roof of the two storey extension should not be added into the calculation as to do so 'bridges two entirely different classes' of the GPDO. In effect, she seeks to draw a distinction between that part of the property's roof (as it existed immediately prior to the erection of the dormer) directly over the extension and the remainder, irrespective of the fact that part of the latter (over the original hip) was constructed at the same time as the extension. However, I find no basis in law for such a distinction.

9. Firstly, advice on pages 7 & 8 of the DCLG publication *Permitted development for householders: Technical guidance* (January 2013)[1], hereinafter referred to as the PDTG, makes it clear that when considering whether a development proposal is permitted development, all of the Classes within the Parts of Schedule 2 to the GPDO need to be taken into account. It goes on to say that changes to the roof of a house are not permitted development under Class A but may be permitted development under Class B or C. In other words, the

[1] The LDC application pre-dates this publication and my decision must relate to the time of the application. However, the relevant provisions of the PDTG in its current form have not changed from the previous version of the document published in August 2010.

extension in its entirety could not have fallen wholly into Class A and 'bridging' different Classes in these particular circumstances is not incorrect. Nor does the fact that the extension roof might conceivably have formed part of a structure erected in part as permitted development under Class A[2] somehow preclude it from being regarded as an addition to the original roof space. On the contrary, in circumstances where an additional roof directly adjoins the original, as in this case, it is a matter of logic that it must have added to the original roof space.

10. Secondly, the Appellant's line of reasoning conflates the concepts of what type of roof enlargement might be categorised as permitted development under Class B and what should be regarded as part of the *resulting roof space* for the purposes of applying that Class. This confusion is highlighted by the statement made on her behalf that 'if the application for the roof conversion should have included the roof over the extension, the applicant is, in effect, being requested to apply twice for Planning Permission for the same roof'[3] and by the suggestion that 'as the two storey extension is not part of the original building and was the subject of a separate Planning Approval its cubic capacity falls outside the controls of Class B'[4].

11. The two concepts are quite distinct, as is readily apparent from interpretive paragraph B.3 of Class B. This records that the 'resulting roof space' means the roof space as enlarged, taking into account any enlargement to the original roof space, *whether permitted by Class B or not* [my emphasis]. Notwithstanding the Appellant's contrary interpretation, this in fact gives a clear indication that, irrespective of how an existing roof space has attained its present size over and above that of the original roof space, no part of it can be disregarded in calculating how much more might be added to the roof as permitted development.

12. It is self-evident from the wording of the GPDO that Parliament intended additions to the roof of a dwellinghouse to be subject to a cumulative limit. Contrary to the Appellant's interpretation of paragraph B.3, I find nothing therein to suggest that certain types of addition to the original roof, such as the roof of a side extension, should not contribute to that limit. I attach no significance to the fact that Class B refers to 'an addition or alteration to **its** roof' [the Appellant's emphasis]. The suggestion that the use of the singular draws a distinction between the original roof and later additions is spurious and unsubstantiated.

13. The Appellant's stance that 'any additions beyond the original dwelling are dealt with by way of either Class A (extensions) or relevant planning applications', to the effect that they cannot form part of a 'resulting roof space', has no foundation in law. I am aware of no Government guidance or Court judgment which supports such an interpretation of the GPDO. The fact that the roof over the extension contains the stairs that now serve the dormer accommodation but did not do so until after the latter had been constructed has no significant relevance. It formed part of the roof space of the

[2]It would appear from the Appellant's submissions that the two storey side extension at No 11 did not itself benefit from permitted development rights and that, in fact, express planning permission was granted for it, variously stated as having been at some time during the 1980s or, alternatively, in 1994.
[3] Letter to Ms Hobbs from Jon Andrews Ltd dated 3 August 2012.
[4] Letter for the attention of Mr Hodgetts from Jon Andrews Ltd dated 30 March 2012.

dwellinghouse as a whole at the point of dormer construction irrespective of what it contained at that time.

14. It follows that, for the purposes of applying Class B, the roof over the two storey extension must properly be regarded as having added to the original roof space of the dwellinghouse and, thus, as forming part of the 'resulting roof space' that includes the subject dormer. In such circumstances, the dormer must be viewed as having increased the roof space of the property to a volume more than 50 cubic metres greater than that of the original roof space. It cannot therefore benefit from deemed planning permission pursuant to the GPDO. Express planning permission not having been granted, it is unlawful.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

16. The appeal is dismissed.

Alan Woolnough

INSPECTOR