
Appeal Decision

Site visit made on 5 January 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 5 February 2016

Appeal Ref: APP/Q1445/X/15/3005773
6 Winchester Street, Brighton, BN1 4NX

- 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 Mrs Mjriam Sessa against the decision of Brighton & Hove City Council.
- The application Ref BH2014/01007, dated 22 March 2014, was refused by notice dated 11 November 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 LDC is sought is a dormer window roof conversion providing an additional bedroom.

Decision: The appeal is dismissed.

Reasons

1. The issue in question is whether the dormer addition that has been constructed comes within the "permitted development rights" conveyed by Class B of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order (GPDO) 1995, as amended¹. It is evident from the case presented by the Council that the matters in contention relate to whether the development is all within the curtilage of the dwellinghouse and whether the terms of condition B.2(a) of Class B are met, namely whether the materials used in any exterior work are of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. In all other respects the Council accept that the dormer extension satisfies the requirements of Class B.
2. The agent has referred to other materials used as facing materials for dormer windows on buildings in the area and elsewhere in Hove and the likely historical roofing materials used on the properties in Winchester Street. The merits or otherwise of the materials used in this instance are not a matter for consideration as this is not a planning appeal. The only consideration is whether the development that has taken place is lawful having regard to the terms of the GPDO.
3. Detailed drawings of the dormer extension have been provided which show that it spans the full width of the plot and has effectively replaced the entire original rear roof slope. There is no dispute that the northern face or cheek of the

¹ Although a new GPDO 2015 has replaced the 1995 Order that latter was still in force at the date that the LDC application was submitted and accordingly forms the legal basis for determination of this appeal

dormer has been built up from the party wall with 8 Winchester Street. I note that a party wall agreement has been signed by the owners of No.8, dated 16 July 2013, but this is a private property matter and does not mean that the development in question is lawful.

4. The Council argue that because the cheek of the dormer is built above the entirety of the northern party wall that it includes land outside the curtilage of No.6 and hence it is not permitted development. No guidance or court authority has been cited to support this position and it is therefore a matter of interpretation. A small part of the addition is built over part of the party wall which is in the ownership of No.8. Whilst the encroachment only appears from the submitted plans to be a matter of about 150mm I nevertheless interpret this as amounting to development outside the curtilage of No.6 within the curtilage of No.8. On this basis I find that as part of the development is not within the curtilage of the dwellinghouse the subject of the LDC application and subsequent appeal it would not come within the terms of Class B.
5. Turning to the second reason for opposing the issuing of an LDC, it is necessary to consider whether the development meets the terms of Condition B.2(a) of Class B. The Council argue that the facing materials used to cloak the cheeks and face of the dormer extension, namely dark grey synthetic slates, are not "of a similar appearance" to the roof tiles that characterise the dwelling. There is also a comment that the main rear window in the dormer has a strong horizontal emphasis.
6. Reference is made to P33-34 of the Department of Communities and Local Government (DCLG) – Permitted Development for Householders: Technical Guidance April 2014 which states:

"The face and sides of a dormer window should be finished using materials that give a similar visual appearance to the existing house. So the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level.

Window frames should also be similar to those in the existing house in terms of their colour and overall shape."
7. In terms of the slates used in the cladding of the dormer they are dark grey in colour. As the rear part of original main roof has effectively been replaced by the dormer there is no roofing material in existence to follow as regards similarity when viewed from ground level. However the front roof slope of the existing house and indeed the main roofs of most of the properties in the vicinity are clad in interlocking tiles. These are dark brown in colour which I consider to be similar to the colour of the slates. However, in terms of design the slates have a smooth, shiny appearance whereas the tiles have a rough textured, articulated appearance which I do not consider to be similar. As regards the fenestration, this consists of white UPVC frames which are the same material used for the windows in the rear elevation at ground and first floor levels. I accept that the larger window in the dormer has a horizontal emphasis but those below have no strong vertical emphasis and are of a variety of widths. Hence I do not agree with the Council's argument on this point.

8. Bringing these findings together, I consider that the slates used are not of a similar appearance to the roofing materials used on the exterior of the existing dwellinghouse. They have similarities in terms of colour but have a distinctly different shape, design and finish to the concrete roof tiles on the main roof. Consequently, I conclude that Condition B.2 of Class B is not met and therefore the dormer extension is not permitted development under Class B of Part 1 of Schedule 2 of the GPDO.
9. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of a dormer window roof conversion providing an additional bedroom at 6 Winchester Street, Brighton, BN1 4NX 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.
10. I would add that from what is before me there is no indication that the Council have taken enforcement action against the development. The appellant has the opportunity to submit a planning application for the development which would then be a matter for the Council to determine having regard to the development plan and any other material considerations. Further discussion with the Council may therefore be appropriate.

N P Freeman

INSPECTOR

