The Planning Inspectorate

Appeal Decision

Site visit made on 18 February 2014

by K Nield BSc(Econ) DipTP CDipAF MRTPI

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

Decision date: 28 February 2014

Appeal Ref: APP/Y3805/X/13/2196418
10 Woodards View, Shoreham-by-Sea, West Sussex, BN43 5LH

- 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 Mr Tim Huitson against the decision of Adur District Council.
- The application Ref AWDM/1178/12, dated 21 September 2012, was refused by notice dated 6 November 2012.
- 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 described in the application as "Residential – C3".

Summary of Decision: The appeal is dismissed.

Procedural matters

1. The Council failed to attend the arranged site visit. With the consent of the Appellant I continued with the visit on an unaccompanied basis. The Council has not objected to that and I have proceeded to determine the appeal following my unaccompanied visit.

2. The Council altered the description of the development to "*Application for Lawful Development Certificate for existing roof extension*". There is no indication that the Appellant accepted the revised description but as it provides an accurate description of the development for which the LDC is sought I will use this description as the basis for my consideration of the appeal.

3. The application form incorrectly describes the development for which the LDC is sought as an existing use. Notwithstanding that I shall consider the LDC on the basis that it is sought for an existing operation.

Preliminary matters

4. The planning merits or otherwise of the development described in the application are not an issue for me to consider in the context of an appeal under s195 of the 1990 Act (as amended).

5. I noted at my site visit that the development for which the LDC was sought has been constructed. I am informed by the parties that subsequent to the Council's refusal of the application for an LDC the Council approved an application for retrospective planning permission for the roof extension.

6. The onus of proof on an LDC application is on the Appellant. The relevant date for assessment is the date of the application.

Main issue

7. The main issue for me to determine is whether at the date of the application the development was permitted by Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development) Order 1995, as amended (GPDO) and thus would benefit from planning permission by virtue of Article 3(1) of the GPDO.

Reasons

8. The host dwelling was originally a single-storey bungalow within a residential area containing properties of a variety of styles. A single-storey rear extension was added some time previously which had the effect of removing the whole of the former projecting end section of the eaves to the bungalow.

9. The dwelling has recently been further extended by the addition of a flat-roofed dormer across the rear roof plane which, together with other alterations to the dwelling, allows accommodation at first floor level. The dormer projects almost as far as the original rear elevation of the dwelling with very little set back from it and it adjoins the previous single storey extension. It is the scale and extent of the dormer that is in question as to whether it satisfies the limitations in Schedule 2, Part 1, Classes B and C of the GPDO which, in general terms, are in respect of extensions to roofs.

10. There is no dispute between the parties that it is only the requirements of Class B.2(b) that are in dispute in terms of the development that has taken place. I have no reason to reach a different view.

11. Permitted development in Class B of Part 1 of Schedule 2 to the amended GPDO provides permitted development rights for the enlargement of a house consisting of an addition or alteration to its roof. Under Class B.2(b) there is a condition such that such development is permitted by Class B subject to the following:

> *"(b) other than in the case of a hip-t- gable enlargement, the edge of the enlargement closest to the eaves of the original roof shall, so far as practicable, be not less than 20 centimetres (cm) from the eaves of the original roof."*

12. The Appellant contends that the development that has taken place constitutes permitted development that satisfies the requirements of Class B.2(b). He argues that the edge of the dormer is set back 20 centimetres from the position of the original eaves to the dwelling although, as I note above, the previously projecting ends of the eaves provided to the rear of the original dwelling were removed to accommodate an earlier extension.

13. In support of this contention the Appellant makes reference to Technical Guidance[1] issued by the Government which was current at the time of the application. That document provided guidance on how the measurement of 20cm should be made indicating that it should be "*along the original roof slope*

[1] Department for Communities and Local Government (DCLG):– *Permitted development for householders* Technical Guidance.

from the outermost edge of the eaves (the edge of the tiles or slates) to the edge of the enlargement".

14. The condition refers to "the original roof" and also to the "eaves of the original roof". In this case as the projecting part of the original eaves no longer exists it was simply not possible to set back the dormer 20 cm from the outermost edge of the eaves to the edge of the dormer as described in the Technical Guidance[2]. The effect of the previous extension has been to alter the original roof such that the alteration to the roof envisaged within Class B is not applicable to the present appeal scheme. My view on this is similar to that of the Inspector in the St Albans case[3] referred to by the Council.

15. The Appellant refers me to the qualification in the condition which states *"so far as practicable"* and to the Technical Guidance which indicates that "*This 20cm set back will be required unless it can be demonstrated that this is not possible due to practical or structural considerations*". However this qualification does not override the need set out in the condition and Technical Guidance for the 20cm distance to be from the original eaves.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the Application for Lawful Development Certificate for existing roof extension was well-founded and that the appeal should fail. I have therefore exercised the powers transferred to me under section 195(3) of the 1990 Act as amended.

Decision

17. The appeal is dismissed.

Kevin Nield

INSPECTOR

[2] Subsequent to the application and the Council's decision the Technical Guidance was updated in October 2013, amongst other matters, to note a High Court judgement: *Waltham Forest London Borough Council v SSCLG [2013]EWHC 2816(Admin)* which confirmed that the term "eaves" is to be taken as meaning the overhanging or projecting part of a roof which projects beyond the wall below and the Court has held that the measurement of 20cm "from the eaves" in Condition B.2(b) of the GPDO on roof extensions means 20cm from the point at which the eaves start (i.e. the intersection of the wall), rather than from the point from where the eaves end (i.e. the gutter or edge of the eaves). A footnote has been added to the relevant section of the Technical Guidance to reflect that judgement.

[3] Appeal Ref: APP/B1930/X/11/2149961 dated23 August 2011