

Appeal Decision

Site visit made on 14 March 2017

by **Diane Fleming BA (Hons) MRTPI**

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

Decision date: 28 March 2017

Appeal Ref: **APP/Q1445/X/16/3164675** **33 Hillside, Brighton BN2 4TF**

- 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 Oliver Dorman against the decision of Brighton & Hove City Council.
 - The application, Ref BH2016/05050, dated 19 August 2016, was refused by notice dated 24 November 2016.
 - The application was made under section 192(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 a proposed hip to gable roof extension, rear dormer, 2 No roof lights and a single storey rear extension.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Procedural Matters

2. The description of development is taken from the Council's decision notice as it is not stated within the application form. The appellant appears to have no objection as he has used this description to complete his appeal form.
 3. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under section 192 of the 1990 Act is to find out whether *future* (my emphasis) development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application. It is on this basis that I have determined whether the development shown on the appellant's drawings would have been lawful if it had been begun at the time of the application.
 4. However, it would appear from the appellant's submissions that this is misunderstood as at the site visit it was apparent that a single storey rear extension had been built as well as an extension in the roof space to facilitate a loft conversion. For the avoidance of doubt therefore, I would point out that the purpose of the application is not to find out whether these works carried out at the site are lawful. They would be dealt with under an application made in accordance with section 191, which deals with existing development. I would also point out that an LDC under section 192 is not the equivalent in law
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- of a planning permission and therefore the issue of planning merits is not relevant to this appeal.
5. Section 192(2) indicates that if the local planning authority are provided with information satisfying them that the use or operations *described* in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
 6. In this case the Council have refused the application on the grounds that what is shown on the drawings to describe the development amounts to not just operational development but that it is 'part and parcel' of a material change of use to a large house in multiple occupation (HMO). They therefore consider that the works would not fall within permitted development (PD) as set out in Schedule 2, Part 1, Classes A, B, C and G of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).
 7. However, I am required to consider the application for development as *described* by the appellant as this is what he wishes to build and I am unable to change the basis of his application. The appeal is confined to the narrow remit of reviewing the Council's decision as to whether it was well-founded or not well-founded. I am also unable to dismiss the appeal on the basis of what might be, notwithstanding the Council's submissions on this point. This is because it is open to the Council to take action if there is a subsequent material change of use. In reaching my decision I have had regard to all of the information that was before the Council and that which has been submitted as part of the appeal.

Reasons

8. The appeal relates to a two storey, semi-detached property. The appellant proposes to erect a single storey rear extension and extensions to the roof to provide additional living accommodation.
9. The Council advise that the site lies within an area the subject of an Article 4 Direction.¹ This removes PD rights to convert single dwelling houses within use class C3 to small HMOs falling within use class C4.² The Council have queried whether the lawful use of the building is within C4 use or whether it remains as a single dwelling house. This is because at the time of the application the building was gutted and they have no record of a grant of planning permission for C4 use and no record of a HMO licence.
10. The appellant submits that the building has been used as a small HMO for some years and produces copies of agreements made between the former owner and the university³ to demonstrate annual use of the property by students.
11. In reaching my decision it seems to me that both uses benefit from the PD rights set out in the GPDO. This is because the PD rights to build an extension or a rear dormer set out in Part 1 of the GPDO apply to 'dwelling houses'. A 'dwelling house' is partially defined within the GPDO article 2 as, except in Part 3 of Schedule 2, not including a building containing one or more flats or a flat contained within a building. Use class C4 is defined as being the 'use of a

¹ The Direction was made on 5 April 2013

² The Town and Country Planning (Use Classes) Order 1987

³ These are dated 30 January 2012, 2 May 2013 and 23 April 2014

dwelling house...' and it follows that the GPDO rights under Part 1 apply to a C4 use so long as the unit in C4 use is not a flat or in a building containing one or more flats. Consequently it is lawful to undertake works relying upon Part 1 of the GPDO prior to the conversion of a property to a C4 use as well as it being lawful to carry out works in accordance with Part 1 of the GPDO once a property is in C4 use.

12. The principle point at issue though is the Council's determination that the works are intended to enable a material change of use to a large HMO. The Council accepts that in all other respects the proposed development would accord with the limitations set out in Classes A, B, C and G of the GPDO and I see no reason to take a different view. As I have already dealt with the Council's principle point in my procedural matters, I therefore conclude that the appeal proposal accords with the limitations set out in Schedule 2, Part 1, Classes A, B, C and G of the GPDO.

Conclusion

13. 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 a proposed hip to gable roof extension, rear dormer, 2 No roof lights and a single storey rear extension was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

D Fleming

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 19 August 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would accord with the requirements of Schedule 2, Part 1, Classes A, B, C and G of the Town and Country Planning (General Permitted Development)(England) Order 2015.

Signed *D Fleming*

Diane Fleming
Inspector

Date 28 March 2017

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First Schedule

A proposed hip to gable roof extension, rear dormer, 2 No roof lights and a single storey rear extension

Second Schedule

Land at 33 Hillside, Brighton BN2 4TF

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 28 March 2017

by Diane Fleming BA (Hons) MRTPI

Land at: 33 Hillside, Brighton BN2 4TF

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Scale: Not to scale

