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## Appeal Decision

Site visit made on 11 December 2018

**by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 January 2019**

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**Appeal Ref: APP/Q1445/X/18/3196462**  
**92 Newick Road, Brighton BN1 9JH**

- 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 R Birtwell against the decision of Brighton & Hove City Council.
  - The application Ref BH2017/03118, dated 4 October 2017, was refused by notice dated 18 January 2018.
  - 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 converted loft space including dormer to the rear roof slope and roof lights to the front roof slope.
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### **Procedural Matters**

1. The Council's refusal notice notes the development as existing loft conversion including rear dormer and 4no roof lights to the front elevation. While the wording is different from the application form, the development is effectively the same.
2. The date for consideration of whether the development is lawful is the date of the application (4 October 2017).

### **Reasons**

3. The main issues are:-
  - Whether the works were part and parcel with an unauthorised change of use to a large house in multiple occupation.
  - Whether the works accord with permitted development limits as defined in the [GPDO].

### **Permitted Development Limits**

4. There is little in the GPDO directly related to the interpretation of the term 'roof plane'. The principle that a notional extension of a surface can occur beyond a surface's physical limits is present in relation to extensions going beyond the front of a principle elevation, with the technical guidance demonstrating that extensions to the side of the principle elevation, but in front of the line of the principle elevation would not be permitted development.
5. Class B relates to additions to a roof and provides permitted development rights for the enlargement of a house consisting of an addition or alteration to

its roof. Under Class B there are some limitations preventing such alterations, including (c) that any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway.

6. To my mind a roof plane is a notional two dimensional form parallel with and on the same level as the surface of the roof. The appellant argues that the extent of the roof plane is that of the surface of the roof stopping at the perimeter, and the Council says that the plane continues beyond the perimeter of the roof. As noted there is little direct help with the interpretation. However, it is clear to me that there must be a distinction between a 'roof plane', roof slope and roof surface. Distinction occurs in Class C as well as in Class B. In Class C (b) it is noted that the alteration would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof. To my mind if roof surface were effectively the same as roof plane, there would have been little reason to make this distinction or the distinction with roof slope.
7. I therefore conclude that a roof plane does run parallel with and at the same level of a roof surface or slope and that it is at the same height and slope as that surface, but the plane also continues beyond that surface. There is logic to this as the clear intention of the permitted development limitations as set out in the technical guidance is to limit development in relation to the principle elevation. It notes under Class B that 'the effect of this is that dormer windows as part of a loft conversion, or any other enlargement of the roof space, are not permitted development on a principal elevation that fronts a highway and will therefore require an application for planning permission'.
8. In this case, while the dormer extension is behind the actual roof surface, it is extremely prominent, and it would seem to me to be a clear example of why a roof plane was necessary and to be distinguished from the roof slope or surface.

### ***Part and Parcel of a House in Multiple Occupation***

9. At the time the works were undertaken the house was used lawfully for multiple occupation (C4 HMO) and the appellant notes that this was the case at the time of the application, when the loft conversion works had been completed.
10. The time scale of applications show the appellant converted the loft with building regulation approval applied for in July 2015 and completion certificate in September 2015. An application for a 9 person HMO licence was also submitted in July 2015. While the work was completed at the time of lawful use as a C4 HMO, the timing of the application for building regulation approval and the 9 person HMO licence makes it most likely that the intended conversion was part and parcel of development to provide a 9 person HMO. A temporary change is identified by the appellant to a 'sui generis HMO in the interim, but at the time of the application accorded with C4 use. To my mind, on the balance of probability, the operational development was most likely part and parcel of the change to use by 9 persons.
11. However, overall, even if it were not the case and the development was initially associated with the lawful C4 HMO, the development would still not be lawful,

because it does not accord with the limitations of permitted development as identified above.

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of converted loft space including dormer to the rear roof slope and roof lights to front roof slope 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.

*Graham Dudley*

**Inspector**

