



# Appeal Decision

Site visit made on 14 October 2009

by **R J Perrins MA MCI**

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**Decision date:**  
**12 November 2009**

## Appeal Ref: **APP/Q1445/X/09/2098191**

### **44 Arundel Drive East, Saltdean, Brighton BN2 8SL.**

- 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 Jenny Campbell against the decision of Brighton & Hove City Council.
- The application Ref BH2008/03626, dated 19 November 2008, was refused by notice dated 26 January 2009.
- 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 a hipped to gable roof conversion.

### **Summary of Decision: The appeal is dismissed.**

#### **Main issue**

1. The main issue for me to decide is whether the development would be permitted under the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (GPDO). In particular Schedule 2, Part 1, Class B, B.1(c)(ii)<sup>1</sup>.

#### **Reasons**

2. The roof of the appeal property has been converted and the Council contend that the development has increased the cubic content of the dwellinghouse by approximately 58.9 cubic metres and thereby does not comply with the GPDO. The appellant opines that the Council have included the airspace below the eaves of the extended hips which has falsely increased the volume calculation. The appellant's own calculations, excluding that air space, put the increase in volume at 48.62 cubic metres.
3. It is clear from the guidance laid down in the *citation, commencement and interpretation* of the Town and Country Planning (General Permitted Development) Order 1995<sup>2</sup> that external measurements are to be used. However, during my site visit the parties were able to agree on a number of internal and external measurements. Those internal measurements being useful as comparators and to enable me to assess the facts of the case.
4. It is clear from those agreed measurements that there is some ambiguity between what is shown on drawing No 01A, submitted with the application, and

<sup>1</sup> The cubic content of the resulting roofspace would exceed the cubic content of the original roof space by more than 50 cubic metres.

<sup>2</sup> "cubic content" means the cubic content of a structure or building measured externally.

- that measured on site. For example, the proposed side elevation shows the depth of the property to be 8.9m; on site this was measured at 9.1m. In addition, scaling from those drawings, the width of the property, measured at the rear elevation, is approximately 10.1m; on site this was agreed at 10.44m. That measurement was borne out by an internal measurement of 10.35m.
5. Also, measurements were agreed internally which included 2.31m for the distance from the height of the floor beams to the bottom of the barn end. This is indicated as 2.42m on the drawings. An external measurement of 2.77m was also agreed from the top of the uppermost course of bricks on the gable end. I have no detail of whether the roof joists that have been constructed match, in height terms, those that were there previously or what the original level internally was. Therefore, it seems to me that, of those measurements, the external measurement would be the most appropriate.
  6. The disparity continues, internally the height of the barn end detail was measured at 1.07m to a depth of 1.15m, from the drawing those measurements are shown as 1.29m and 1.28m. The internal measurement does not reflect the external given the difference is up to 0.22m. To my mind the drawing does not accurately depict what has been built. Moreover, reliance upon that drawing for other matters, such as establishing the position and size of the original roof must be drawn into question.
  7. Paragraph 8.12 of Circular 10/97 *Enforcing Planning Control: Legislative Provisions and Procedural Requirements* confirms that the onus of proof in a LDC application is firmly on the applicant/appellant. It is not a matter for me to work out the volume of what has been built. In any event I am not convinced that would be possible given the drawing and measurements I have available to me. I must therefore find, as matter of fact and degree, that Schedule 2, Part 1, Class B, B.1(c)(ii) would not be met and the application must fail. In addition, there is a fundamental error in drawing No 01A in that it refers to No 42 Arundel Drive East, whilst I have no doubt this is an administrative oversight, that drawing is the one upon which the appellant relies and which would be subject to any LDC.
  8. I have also taken into account a number of third party representations regarding the impact of the development upon the character and appearance of the locality and living conditions of occupiers of nearby properties. However, the planning merits of the case are not before me and have not formed part of my deliberations.

### **Conclusions**

9. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the loft conversion 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.

### **Decision**

10. The appeal is dismissed.

*Richard Perrins*

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