



Appeal Decision

by **Stuart M Reid** D Arch (Hons) RIBA

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

Date 26 April 2011

Appeal Ref: APP/Q1445/X/10/2142008
25 Hazeldene Meads, BRIGHTON BN1 5LR

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development.
 - The appeal is made by Dinah Rae against Brighton & Hove City Council.
 - The application (Ref.BH2010/03062) is dated 27 September 2010.
 - 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 the installation of PV panels to the south, east and west.
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Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed operation which I consider to be lawful.

Main Issue

2. I consider that the main issue is, if the Council had refused the application, whether their refusal would have been well-founded.

Reasons

3. For the avoidance of doubt, I should explain that the planning merits of any future use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the *Town and Country Planning Act 1990* as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
4. After the period for determining the appeal had expired the Council recommended that a lawful development certificate for the proposed solar panels should be granted, as they would be permitted development under Schedule 2, Part 40, Class A of *The Town and Country Planning (General Permitted Development) Order 1995* as amended (GPDO). As the appeal building is a dwellinghouse, I agree with their recommendation, and I shall therefore grant a lawful development certificate for this development, as it would be permitted development. It is to be noted that any installation is subject to the restrictions and conditions set out in the GPDO.

Conclusions

5. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a lawful development certificate in respect of the installation of PV panels to the south, east and west was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Stuart M Reid

INSPECTOR



Lawful Development Certificate

APPEAL REFERENCE APP/Q1445/X/10/2142008

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(as amended by section 10 of the *Planning and Compensation Act 1991*)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 27 September 2010 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(2) of the *Town and Country Planning Act 1990* as amended, for the following reason:

As the appeal building is a dwellinghouse, the proposed PV solar panels to the south, east and west elevations would be permitted development under Schedule 2, Part 40, Class A of *The Town and Country Planning (General Permitted Development) Order 1995* as amended.

Stuart M Reid D Arch (Hons) RIBA

INSPECTOR

First Schedule

The installation of PV panels to the south, east and west elevations, as shown on drawing no. 29762/1 date stamped 27 Sep 2010 and the 2 unnumbered drawings of the front, side and rear elevations submitted with the application and the appeal and date stamped 07 Oct 2010, subject to the restrictions and conditions set out in *The Town and Country Planning (General Permitted Development) Order 1995* as amended.

Second Schedule

Land at 25 Hazeldene Meads, BRIGHTON BN1 5LR.

NOTES

1. This certificate is issued solely for the purpose of section 192 of the *Town and Country Planning Act 1990* as amended.
2. It certifies that the use or the operations or the matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted, described in the First Schedule taking place on the land specified in the Second Schedule was or were or would have been lawful, on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use or operations or matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or operation or matter 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.
4. 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: 26.04.2011

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Scale: Not to scale



