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## Appeal Decision

Site visit made on 20 March 2015

by **Sandra Prail, MBA, LLB (Hons), Solicitor (non-practising)**

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

Decision date: 10 April 2015

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**Appeal Ref: APP/Q1445/X/14/2219913**

**10 Freshfield Place, Brighton, BN2 0BN.**

- 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 lawful development certificate (LDC).
- The appeal is made by Mrs Emma Curtayne against the decision of Brighton and Hove City Council.
- The application No. BH2014/00437 was dated 10 February 2014. It was refused by notice dated 7 April 2014.
- The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is proposed loft conversion incorporating rear dormer, rear roof extension and a rooflight to front elevation.

**Summary of decision: the appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.**

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### Preliminary matters

1. For the avoidance of doubt, I should explain that the planning merits of any future 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 (LDC). My decision rests on the facts of the case, and on relevant planning law and judicial authority.
2. The refusal notice states that the volume of the roof additions exceeds 40 cubic metres and therefore not permitted under Schedule 2 Part 1 Class B of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the GPDO). The Council has agreed in correspondence in the course of this appeal that this is incorrect and that the 40 cubic metre threshold is met. I have no reason to reach an alternative conclusion and therefore this reason for refusal is not well founded.
3. The questionnaire submitted by the Council states that the appeal site is located in a Conservation Area. In correspondence during the course of this appeal the Council has confirmed that the rear boundary adjoins a conservation area but

the site is not within a conservation area. It is therefore now common ground that the site is not on article 1(5) land for the purposes of this appeal.

### **Main Issue**

4. I consider that the main issue is whether the Council's refusal to grant a lawful development certificate was well-founded. This turns on whether at the date of the application (10 February 2014) the proposed development would have been lawful. Whether development is permitted must be considered in the context of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (the GPDO) and the Technical Guidance issued by the Department for Communities and Local Government (the Technical Guidance) as they were at the date of the application the subject of this appeal.
5. The proposed development is a loft conversion incorporating rear dormer, rear roof extension and a roof light to front elevation. The plans show a new extract flue to the rear. The proposed dormer is within the pitched roof on the rear elevation. The proposed rear roof extension sits on the flat roof of the rear outrigger and links to the pitched roof. The flat roof of the outrigger lies below the eaves level of the pitched roof.
6. Article 3 and Class B of Part 1 to Schedule 2 of the GPDO permits the enlargement of a house consisting of an addition or alteration to its roof subject to certain conditions and limitations. Subject to restrictions Class C provides permitted development rights for any alteration to the roof of a house and Class G for the installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse. It is common ground between the parties that the flue and front rooflight are permitted development. The issue in dispute between the parties is whether the proposed development would be able to meet condition B.2 (b) of Schedule 2 Part 1 Class B to the GPDO if carried out at the date of the application. It is common ground between the parties that all other conditions and limitations are satisfied and I have no reason to reach an alternative conclusion.
7. The Council maintain that condition B.2 (b) is not met. They say that the rear dormer extends beyond the eaves of the original pitched roof over the flat roof of the rear outrigger and that the plans show a height distinction between the pitched eaves and the flat roof below of approximately 200mm with the eaves extending the full width of the building. Therefore they say the proposal would fail to be set back 20cm from the eaves of the main pitch to the building and there are no practicable reasons why this requirement should not be met in this instance.
8. The Appellant argues that a 20 cm set back is not practicable. She says that the flat roof lies just below the eaves level of the pitched roof and it is at this point where the bathroom would be accessed from the staircase and landing within the pitched roof that it would not be practicable to maintain a 20 cm separation. She argues that the words 'so far as practicable' in condition B.2 (b) of the GPDO are to allow for exceptions and that this is reaffirmed in the Technical Guidance. She argues that the Council has not given any weight to the words 'where practicable' and refers to the planning history at other sites which suggests to her that the Council may be conflating their opinions on the planning merits with the correct application of condition B.2 (b). The Appellant

refers to alterations to the GPDO and the Technical Guidance which she suggests are of assistance in the interpretation of the words 'so far as practicable'.

## **Reasons**

9. In any application for a LDC the onus is on the applicant to demonstrate that the proposed development would be lawful.
10. Class B of the GPDO sets out permitted development rights for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Condition B.2 (b) states that other than in the case of a hip-to-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 from the eaves of the original roof. There is no dispute that the 20cm set back distance is not achieved by the proposed development. What is at issue is whether it would be practicable to achieve this distance in the circumstances of this case. The Technical Guidance at the time of the application states that the 20 cm set back will be required unless it can be demonstrated that it is not possible due to practical or structural considerations. It gives an example of one circumstance where it will not prove practical to maintain the 20cm distance, namely where a dormer on a side extension of a house joins an existing, or proposed, dormer on the main roof of the house.
11. Practicable is not defined in the GPDO. I have applied the definition in the Oxford English Dictionary, namely 'able to be done or put into practice successfully'.
12. The burden is on the Appellant to show that it would not be practicable to achieve the set back distance sought by condition B.2 (b). She has explained her reasoning and I concur with her view. She has discharged the burden of proof that rests upon her in this appeal. I find the particular facts of this case similar to the circumstance given in the Technical Guidance as an example where it will not be practicable to maintain a 20cm distance. I consider that in the particular circumstances of this case it would not be practicable, applying the ordinary meaning of that word, to achieve the 20 cm separation distance other than where it has been achieved. I therefore find condition B.2 (b) of the GPDO to be complied with.
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 the proposed loft conversion incorporating rear dormer, rear roof extension and a rooflight to front elevation at 10 Freshfield Place, Brighton, BN2 OBN 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.

**Formal Decision**

14. 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.

*S. Prail*

INSPECTOR



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## LAWFUL DEVELOPMENT CERTIFICATE

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

TOWN AND COUNTRY PLANNING ACT: SECTION 191 (as amended by section 10 of the Planning and  
Compensation Act 1991)

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**IT IS HEREBY CERTIFIED** that on 10 February 2014 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 operations described in the first schedule would be permitted development by virtue of Article 3 and Class B, C and G of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

The development does not contravene the requirements of any enforcement notice in force.

Signed:

*S. Prail*

INSPECTOR

Date: 10 April 2015

Reference: APP/Q1445/X/14/2219913

### **First Schedule**

Loft conversion incorporating rear dormer, rear roof extension and a rooflight to front elevation as shown on site location plan date stamped by the Council on 14 February 2014, existing plans and elevations and proposed floor plans date stamped by the Council on 24 February 2014 and proposed elevations and section date stamped by the Council on 10 February 2014 (plans marked EC1, EC2 and EC3 in this appeal).

### **Second Schedule**

Land at 10 Freshfield Place, Brighton, BN2 0BN

## **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 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.
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:

**by Sandra Prail MBA, LLB(Hons), Solicitor (non-practising)**

**Land at: 10 Freshfield Place, Brighton, BN2 0BN.**

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Not to Scale

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