
Appeal Decision

Site visit made on 13 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/16/3160829
9 Highview Way, Brighton BN1 8WS

- 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 Mark Tugwell against the decision of Brighton & Hove City Council.
 - The application, Ref BN2016/02567, dated 4 July 2016, was refused by notice dated 30 August 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 described as 'Hip to gable roof extension and construction of dormer to side roof slope. Installation of roof lights to front and side roof slopes'.
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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 Matter

2. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, 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. Applying the terms of Section 192(2) of the 1990 Act to the appeal proposal, the Council has determined the application against the provisions set out in Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).

Reasons

3. The appeal relates to a detached bungalow, with a hipped roof shape, that has been extended at the rear with a conservatory style addition. The appellant proposes to convert the loft area into a bedroom with an en-suite bathroom. A dormer extension would be erected to one side of the roof and roof lights would be inserted on the other side with one overlooking the front of the property. The rear part of the roof would be changed from a hipped shape to a largely gable shape and would have a 'feature' window made up from a pair of French windows opening onto a Juliette balcony flanked by glazing either side.
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4. The principle point at issue is the Council's determination that the proposed 'feature' window, to be inserted within the new gable end of the roof, would not be similar in appearance to the existing fenestration of the dwelling. This is in respect of the proposed material to be used to construct the window and in terms of its shape.
5. The Council accepts that in all other respects the proposed development would accord with the limitations set out in Classes B and C of the GPDO and I see no reason to take a different view.
6. The appellant submits that the proposed 'feature' window would match the existing fenestration in terms of materials and that this was shown on the information submitted with the application. Furthermore, the overall shape of the window should not be a consideration.
7. At the site visit I saw that the windows on the front elevation, which serve principle rooms, were white and made from uPVC. Drawing number LDC02A, dated June 2016, was submitted with the application and is listed on the Council's decision notice as information taken into account when deciding the application. This drawing shows that the proposed 'feature' window is to be made from uPVC. As such, I consider the material for the proposed 'feature' window would match the existing windows in the dwelling and there would therefore be no breach of condition (a) within paragraph B.2. of Class B.
8. With regard to the shape of the 'feature' window, this has been designed to sit within part of the new gable end elevation. Condition (a) within paragraph B.2. requires only that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the dwelling. There is no reference to a requirement for the shape of any feature to be similar in appearance to existing features.
9. The Department for Communities and Local Government published 'Permitted development rights for householders, Technical Guidance' (TG) in April 2016 and this assists with the interpretation of the GPDO. It sets out (page 35) that condition (a) within paragraph B.2. is intended to ensure that loft conversions are sympathetic in their design when compared to the existing dwelling. The visual impacts of the materials used will be the most important consideration but it also states that window frames should be similar to those in the existing dwelling in terms of their colour and overall shape.
10. Whilst the proposed 'feature' window partially replicates the triangular shape of the gable end of the roof, the main element of it is the centrally positioned pair of French windows, which open inwards into the bedroom. I consider that these would be similar in shape to the ground floor French windows, which open into the conservatory and which also are flanked by glazing. Although there is a difference in shape between the rectangular flanking glazing of the ground floor windows and the proposed trapezium flanking glazing forming part of the 'feature window', the TG only refers to similarity in terms of the overall shape. Given my finding that the principle element in the proposed 'feature' window is the pair of French windows, I consider that the difference between the overall shape of the 'feature' window and the existing glazing in the dwelling would be marginal. The appeal proposal therefore accords with the limitations set out in Schedule 2, Part 1, Class B of the GPDO as well as Schedule 2, Part 1, Class C in respect of the proposed roof lights.

Conclusion

11. 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 development described as 'Hip to gable roof extension and construction of dormer to side roof slope. Installation of roof lights to front and side roof slopes' 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 4 July 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 B and C 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

Hip to gable roof extension and construction of dormer to side roof slope.
Installation of roof lights to front and side roof slopes

Second Schedule

Land at 9 Highview Way, Brighton BN1 8WS

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

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Land at: 9 Highview Way, Brighton BN1 8WS

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Scale: not to scale

