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## Appeal Decisions

Site visit made on 9 May 2019

by Jean Russell MA MRTPI

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

Decision date: 22 July 2019

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**Appeal A: APP/Q1455/C/18/3206155**

**Appeal B: APP/Q1455/C/18/3206156**

**Land at Lantorn Cottage, 78 Wayland Avenue, Brighton, BN1 5JN**

- Appeals A and B are made by Mrs Angela Maguire and Mr Michael Maguire under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Brighton and Hove City Council on 28 June 2018.
  - The breach of planning control as alleged in the enforcement notice is: *without planning permission [the] creation of two roof lights in the western roof slope that are openable less than 1.7m above the floor of the rooms in which they are located.*
  - The requirement of the notice is to: *permanently secure shut the two roof lights on the western roof slope, located in two shower rooms, so they are not capable of being opened.*
  - The period for compliance with the requirement of the notice is 2 months.
  - The appeals are proceeding on various grounds (described below) set out under section 174(2) of the Town and Country Planning Act 1990.
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### Decisions

1. Appeals A and B are dismissed, and the enforcement notice is upheld.

### The Grounds of Appeal

2. The appellants initially made their appeals on the grounds set out under s174(2)(a) and (b) of the Town and Country Planning Act 1990 (TCPA90).
3. As will be clear from my reasoning below, the points made on the appeal forms in support of ground (b) related more properly to grounds (c) and (d). The Planning Inspectorate wrote to the appellants on this matter on 7 August 2018; they replied on 20 August that they wished to plead (b), (c) and (d). The Council and other parties have had a fair opportunity to comment on these grounds of appeal.
4. The appellants' email of 20 August also included comments in support of ground (a) – but that is pleaded to obtain planning permission for what is alleged by the notice. Ground (a) gives rise to a deemed planning application (DPA) for which a fee is payable within a specified period.
5. The Planning Inspectorate wrote to the appellants on 21 August 2018 to request payment of the fee – and then on 5 September to confirm that such had not been received, and ground (a) and the DPA for both appeals had lapsed. There is now no scope for me to consider the planning merits of the alleged rooflights.
6. Appeals A and B proceed on grounds (b), (c) and (d). It is for the appellants to make their case, on the balance of probabilities, for these 'legal' grounds of appeal.

### Appeals A and B on Ground (b)

7. This ground of appeal is that what is alleged by the notice has not occurred – but the appellants do not refute that two rooflights were installed in the western roof slope of their house under a wider scheme of alterations and extensions to Lantorn

Cottage. It makes no difference that there was a pre-existing rooflight; the alleged works occurred as a matter of fact, and so the appeals must fail on ground (b).

### **Appeals A and B on Ground (c)**

8. Ground (c) is that what is alleged by the notice does not amount to a breach of planning control. The Council argues that there has been a breach because the rooflights require planning permission but do not benefit from that granted under Article 3, Schedule 2, Part 1, Class C of the *Town and Country Planning (General Permitted Development) (England) Order 2015* (the GPDO 2015) as amended.
9. When considering whether operations previously carried out would be permitted by the GPDO, regard must be had to the version of the GPDO that was in force when the development was begun. The appellants say that works to Lantorn Cottage began in 2014, and third parties affirmed that works were 'in progress' in January 2015 – which was before the GPDO 2015 came into force on 15 April of that year.
10. Accordingly, the rooflights have to be considered with regard to the *Town & Country Planning (General Permitted Development) Order 1995* (the GPDO 1995) as it had been amended by the end of 2014. However, this finding makes no practical difference, since Article 3, Schedule 2, Part 1, Class C was worded the same in both versions of the GPDO.
11. Article 3, Schedule 2, Part 1, Class C of the GPDO 1995 permitted 'any other alteration to the roof of a dwellinghouse' subject to conditions and limitations<sup>1</sup>. Condition C.2 was that any window located on a roof slope forming a side elevation of the dwellinghouse shall be (a) obscure-glazed; and (b) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.
12. Both alleged rooflights are located on a roof slope forming a side elevation of Lantorn Cottage. Both are obscure-glazed, in accordance with C.2(a), but they are also openable with the opening parts being clearly less than 1.7m above the floors of the rooms they are in. Neither rooflight complies with condition C.2(b).
13. I understand the appellants' disappointment, but it does not help them that a Council officer inspected the property and then wrote on 5 May 2015 that: '*...as far as I could tell the work being done, comprising of a single storey, hip to gable, two dormers and roof lights, do fall within permitted development rights under Class A, B and C [of the GPDO 1995]*'. That letter was informal and did not certify that the Council ascertained the works to be lawful<sup>2</sup>.
14. The appellants suggest that the rooflights do not cause 'direct overlooking' when rooflights on other houses do – but those points go to merits and not lawfulness. Condition C.2(b) is plainly worded, and since the appeal rooflights do not comply with it, they are not permitted under Class C. It makes no difference that the original rooflight at the property was in the same position and openable, because its replacement with the alleged rooflights amounted to new building operations.
15. The appellants have not shown that the creation of the rooflights did not require or was undertaken with the benefit of planning permission. I conclude on the balance of probabilities that there has been a breach of planning control as alleged and the appeals must fail on ground (c).

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<sup>1</sup> 'Other' meaning alterations to a roof not falling to be considered under Part 1, Class B which permits 'the enlargement of a dwellinghouse consisting of an addition or alteration to its roof'. Rooflights do not normally 'enlarge' a dwellinghouse or thus fall to be considered under Class B.

<sup>2</sup> It is necessary to apply for a Lawful Development Certificate under s191 or s192 of the TCPA90 to ascertain whether existing or proposed development is lawful.

### **Appeals A and B on Ground (d)**

16. This ground is that it was too late for the Council to take enforcement action on the date that the notice was issued.
17. S171B(1) of the TCPA90 provides that operations are immune from enforcement action *'after the end of the period of four years beginning with the date on which [they] were substantially completed'*<sup>3</sup>. Whereas the critical date for ground (c) is when the rooflights were begun, the question for (d) is whether the rooflights were 'substantially completed' four years before the notice was issued on 28 June 2018.
18. In their email of 20 August 2018, the appellants included a photograph taken on 24 January 2015 *'when the measurements were taken and confirmed as meeting the regulations'*. I am not clear as to which regulations these might be, but in any event the photograph shows the rafters of the roof and not the rooflights in a finished state. I have noted the third party evidence that works were 'in progress' in January 2015 – and the Council's later letter describing 'work being done'.
19. The appellants have not demonstrated, and it is improbable that the rooflights were 'substantially completed' by 28 June 2014, four years before the notice was issued. I conclude that it was not too late for the Council to take enforcement action when they did. The appeals fail on ground (d).

### **Other Matters and Conclusion**

20. The appellants were not informed until 15 June 2018 that the rooflights had to be fixed shut – and so their *'main concern is regarding the way in which [the Council] has dealt with the matter'*. My remit is to determine the appeals against the enforcement notice; I cannot look more widely at the Council's behaviour.
21. For the reasons given above, I conclude that Appeals A and B cannot succeed, and the enforcement notice must be upheld.

*Jean Russell*

INSPECTOR

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<sup>3</sup> S171B(1) of the Town and Country Planning Act 1990