



Appeal Decision

Site visit made on 11 February 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal Ref: APP/Q1445/X/19/3234528

15 Withdean Crescent, Brighton BN1 6WG

- 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 in part to grant a certificate of lawful development (LDC).
 - The appeal is made by Mr Christopher Whyte against the decision of Brighton & Hove City Council.
 - The application Ref BH2019/00288, dated 31 January 2019, was refused in part by notice dated 20 June 2019.
 - 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 development is sought is:
Loft conversion incorporating rear dormer, 3no front rooflights and 1no side rooflight.
Erection of detached garage and covered side passageway.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed operation which is considered to be lawful.

Preliminary Matters

2. I have taken the description of development in the heading above from the Council's decision notice as this more accurately describes the development than the LDC application form.
3. The Council's decision certifies that a proposed single storey side extension, rooflights, hardstanding and soil vent pipe are permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the Order'). However, a rear dormer and garage have been refused by the same decision and so I have considered the dormer and garage only.
4. The application is for a proposed development and I have considered it on this basis, yet development of the site has commenced. However, it was apparent from my site inspection that the development constructed, particularly in respect of the dormer, does not reflect that shown on the plans I have been provided with and on which the Council based its decision. Accordingly, I have based my assessment and decision on those drawings rather than what has been built.

Main Issue

5. The main issue is whether the Council's decision to refuse to certify the dormer and garage as lawful was well-founded or not.

Reasons

6. The Council considers the dormer is not permitted by the Order, describing it as 'fully glazed' and not of a similar appearance to materials on the **main roof**, (my emphasis). However, this does not reflect the wording of the Order. Schedule 2, Part 1, Class B.2(a) of the Order is a condition which states that development is permitted subject to the materials used in any exterior work being of a similar appearance to those used in the construction of the exterior of the **existing dwellinghouse**, (my emphasis).
7. The dormer shown on the drawings provided has windows on each of its vertical elevations. There is no evidence before me to indicate that such a design cannot be permitted by the Order. Moreover, there is no evidence the dormer proposed in the application would not comply with condition B.2.(a). Were this condition not complied with, the Council may consider whether enforcement action should be taken.
8. The Council considers the garage is not permitted by the Order as it is shown positioned within 2 metres of a boundary and exceeding 2.5m in height, and, it is shown with an eaves height exceeding 2.5m. This being the case, Schedule 2, Part 1, Class E.1(e)(ii) and Schedule 2, Part 1, Class E.1 (f) of the Order would not be complied with.
9. As is stated in paragraph 2.(2) of the Order, any references to the height of a building are to be construed as a reference to its height when measured from ground level immediately adjacent to the building. Moreover, it states where the level of the surface of the ground on which it is to be situated is not uniform, ground level is the level of the **highest** part of the surface of the ground adjacent to it (my emphasis).
10. The drawings show that ground levels immediately adjacent to the proposed garage vary as the land slopes down from the front to the rear of the site and from the left to the right of the site when viewed from the street. Based on the drawings provided, the height of the garage from the highest part of the ground adjacent to it does not exceed 2.5m in height and nor does its eaves.

Conclusion

11. For the reasons given above I conclude, on the evidence available to me, that the Council's refusal in part to grant a certificate of lawful development in respect of a loft conversion incorporating a rear dormer, 3no front rooflights and 1no side rooflight and the erection of a detached garage and covered side passageway, was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

L Perkins

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 31 January 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

There is no evidence the dormer and garage described in the application would not comply with Schedule 2, Part 1, Class B or E respectively, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed:

L Perkins

INSPECTOR

Date: 18 March 2020

Reference: APP/Q1445/X/19/3234528

First Schedule

Loft conversion incorporating rear dormer, 3no front rooflights and 1no side rooflight. Erection of detached garage and covered side passageway.

Second Schedule

Land at 15 Withdean Crescent, Brighton BN1 6WG

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, 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 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 18 March 2020

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Land at: 15 Withdean Crescent, Brighton BN1 6WG

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Scale: Not to scale

