



Appeal Decision

Site visit made on 24 November 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2020

Appeal Ref: APP/Q1445/X/20/3252666
106 Addison Road, Hove BN3 1TR

- 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 use or development (LDC).
 - The appeal is made by Mr and Ms Emer and Brad Gillespie and Guin (respectively) against the decision of Brighton & Hove City Council.
 - The application Ref. BH2020/00424, dated 10 February 2020, was refused in part by the Council by notice dated 26 March 2020.
 - 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 a 'Loft conversion, with dormer extensions to rear of main roof and outrigger roof'.
-

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.

Preliminary Matters

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellants must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
3. The Council have issued a split decision and consider that the front elevation containing the proposed 3 front rooflights is permitted under Class C of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). I agree with the Council's conclusion regarding this element of the proposal, and therefore it is not necessary for me to consider this aspect of the development further.

Main Issues

4. The Council determined that the proposed loft conversion, with dormer extensions to rear of main roof and outrigger roof would fall foul of the limitations and conditions of Class A and B of Schedule 2, Part 1 of the GPDO. What is in dispute between the parties is whether the proposed extension over the outrigger falls within Class A and/or Class B.
5. Therefore, the main issue is whether the Council's refusal in part to grant the LDC was well founded. In particular, it is necessary to consider whether the proposal should be assessed against Class A and/or Class B of the GPDO, at the date of the application; and whether the proposed extension would be granted planning permission by Article 3, Schedule 2, Part 1, Class A and/or B of the of the GPDO.

Reasons

6. Subject to limitations and conditions, Class A of Schedule 2, Part 1 of the GPDO permits 'the enlargement, improvement or other alteration of a dwellinghouse', and Class B of Schedule 2, Part 1 of the GPDO permits 'additions etc to the roof of a dwellinghouse'.
7. The Council contends that part of the enlargement extends beyond the outside face of the external wall of the original dwellinghouse, contrary to limitation A.1 (h) of Class A and condition B.2 (b)(ii) Class B. Both parties draw attention to the Government's Technical Guidance (TG)¹ which provides a useful guide to interpretation of the GPDO.
8. The TG gives an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. In the guidance for condition B.2(b) it states: "*The enlarged part of the roof may join the original roof to the roof of a rear or side extension (generally referred to as an 'L-shaped dormer' on a main roof and 'outrigger' or 'back addition' roof), whether the part of the house being extended forms part of the original house or is an enlargement, or the shape or level of the pitch of the roofs are different in relation to each other*". This strongly suggests to me that the exception applies in this case as it describes the situation as proposed here and indicates that whether the outrigger is original or a later addition is immaterial; as is whether the level of the pitch of the main roof and that on the outrigger are different.
9. A straightforward reading of the exception in B.2(b) is that "**an**" enlargement should join the original roof to the roof of a rear or side extension. The L shaped dormer proposed here is a single discrete operation and thus amounts to a single enlargement. That single enlargement clearly joins the main roof of the house to the roof of the outrigger – in my view it is not appropriate to treat each arm of the L as if it were a separate development. Furthermore, the proposed extension is confined to the areas of the original roofs of the original dwelling.
10. In addition, the TG is describing the house's rear projection or outrigger as falling within the meaning of "extension" whether original or not. That being

¹ The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

the case, the description of *an enlargement which joins the original roof to the roof of a rear or side extension* applies and so neither condition B.2(b)(i)(aa) or B.2(b)(ii) is relevant to the proposal.

11. Similarly, for the reasons above and owing to the position of the proposal strictly contained on the roof of the original dwelling only, I agree with the appellants that, the proposal falls to be considered solely under Class B, and not Class A of Schedule 2, Part 1 of the GPDO.
12. I note that the TG is guidance rather than statute, but it has been expressly prepared to give an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances. Most outriggers/rear wings on houses to which L shaped dormers are attached are original and, as subsidiary features, they are often referred to as rear extensions. It would be illogical if L-shaped dormers were not permitted due to a relatively small section of external wall, where the outrigger adjoins the rear main wall of the dwelling. Such a restriction would prevent most L-shaped dormers above outriggers, and if this were so there would be no reason for the TG to explicitly refer to L-shaped dormers under the explanatory text for condition B.2(b)
13. Whilst I note the Council has referred to two other appeal decisions² in support of their findings, the TG offers guidance that is of direct relevance to this case. It is intended as an aid to interpretation and application of Part 1 of Schedule 2 to the GPDO. Where the TG clearly covers the issue at hand, as here, it should be followed unless it has either been overturned by the Courts, or it can be demonstrated that it does not apply to the particular facts of the case. Furthermore, the appeal decision at 15 Wilbury Crescent related to two separate individual dormers which were not connected. This is materially different to the appeal before me, which is for a single enlargement where the proposed development clearly joins the main roof of the house to the roof of the outrigger.
14. Therefore, for reasons outlined above, neither condition B.2(b)(ii) of Class B or Class A of the GPDO are relevant to this appeal.
15. The Council also contends that the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 40 cubic metres, for this terraced house, contrary to Class B.1 (d). However, no figures or calculations have been provided by the Council to demonstrate how they reached this conclusion. On the contrary the appellants have provided, within their grounds of appeal, a marked up extract of the elevation drawing 0060/09C, which comprises the relevant measurements of the extension above the main roof and the roof of the outrigger. In the absence of any further evidence from the Council on this matter, I have based my assessment on the measurements provided by the appellants.

² Appeal Ref: APP/Q1445/X/18/3209802 at 20 Leighton Road, Hove, BN3 7AD for a certificate of lawful use or development for a loft conversion with rear dormer dismissed on 1 March 2019; and Appeal Ref: APP/Q1445/X/19/3241855 at 15 Wilbury Crescent, Hove BN3 6FL for a certificate of lawful use or development for two new dormers as part of a loft conversion dismissed on 12 May 2020.

16. From my reading of the drawings and the appellants' measurements, the proposed loft extension would not exceed 40 cubic metres of the existing dwellinghouse. Therefore, the development would not fail to meet the limitation under Paragraph Class B.1 (d) of Schedule 2, Part 1, Class B of the GPDO.

Other matter

17. During the course of the application, the appellants' agent confirmed to the Council in an email³ that the window in the dormer on the roof slope that forms a side elevation of the dwelling would be obscure glazed. As a result, the Council indicate that the proposal complies with the condition at B.2 (c), Class B, Part 1, Schedule 2 of the GPDO. I see no reason to disagree with their conclusions in this regard.

Conclusion

18. 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 Loft conversion, with dormer extensions to rear of main roof and outrigger roof 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.

R. Satheesan

INSPECTOR

³ Dated 28 February 2020.

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 10 February 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red 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 development is "permitted development" falling within Class B and C of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

R. Satheesan
Inspector

Date : 04 December 2020
Reference: APP/Q1445/X/20/3252666

First Schedule

Loft conversion, with dormer extensions to rear of main roof and outrigger roof.

Second Schedule

Land at 106 Addison Road, Hove BN3 1TR

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: 04 December 2020

by **R Satheesan BSc PGCert MSc MSc MRTPI**

Land at: 106 Addison Road, Hove BN3 1TR

Reference: APP/Q1445/X/20/3252666

Not to scale.

