



Appeal Decision

Site visit made on 19 April 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2022

Appeal Ref: APP/Q1445/X/21/3288565 45 Seville Street, Brighton BN2 3AR

- 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 James Nicholson against the decision of Brighton & Hove City Council.
 - The application Ref BH2021/02879, dated 4 August 2021, was refused by notice dated 11 October 2021.
 - 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 has been described is: Proposed erection of a rear L shaped dormer with juliet balcony.
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Summary of Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to grant a certificate of lawfulness for the proposed development was well founded.

Reasons

3. In matters such as this, the onus is on the appellant to demonstrate his case on the balance of probabilities that the proposed erection of a rear 'L' shaped dormer with Juliet balcony is permitted development pursuant to the Order¹. My assessment is therefore very fact specific, based upon the evidence before me and roof form of the property at the site.
4. The property is situated in a row of terraces. At the rear, there is very little evidence that the roof slopes have been altered or extended. This includes a rear outrigger, for which the evidence before me is that it is original to the property and therefore not an extension.
5. The proposed dormer would replace the majority of the existing rear roof slope, including that of the outrigger. That being so, the proposed dormer would largely replace the two original roofs. However, given the roof of the outrigger is set at a lower level, part of the exposed original rear wall of the dwelling would be subsumed by the proposal. Accordingly, the enlargement would extend beyond the outside face of an external wall of the original

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

dwellinghouse. Schedule 2, Part 1, Class B.2 (ii) of the Order is therefore contravened as it is only permissible to do so in circumstances where the proposed enlargement joins the original roof to the roof of a rear or side extension. The outrigger is original, not an extension, and the proposal would not merely join the original roof to the roof of an extension. As a matter of fact and degree, the proposal therefore amounts to more than just additions to the roof.

6. I appreciate the appellant has provided some references to other schemes that have been certified as permitted development, although the full details of these are not before me and so I can only afford them very limited weight. In respect of the appeal decision² where plans have been provided, that Inspector was not tasked with expressly assessing Class B.2 (ii) of the Order, and with-it the outside face of external walls, as it was not a disputed matter between the parties. Moreover, the evidence before me is the outrigger at the appeal property is original and I have found as a matter of fact and degree that the proposal before me amounts to more than just additions to the roof.
7. In the absence of an illustration depicting the roof form of the appeal property with the development proposed, or similar, or other sufficiently precise clarification, I do not find the Technical Guidance³ demonstrates on the balance of probabilities that the proposal is permitted development within the scope of the Order given the outrigger is set at a lower level than the main roof.
8. There is then very little evidence before me to demonstrate on the balance of probabilities that the proposal could be certified as permitted development under any other Class/es within the Order.
9. As a matter of fact and degree, based upon the evidence before me, the appellant has not discharged the necessary burden of proof to demonstrate his case on the balance of probabilities.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

11. The appeal is dismissed.

Paul T Hocking

INSPECTOR

² APP/T5150/X/18/3213401

³ Ministry of Housing, Communities and Local Government, Permitted development rights for householders, Technical Guidance, September 2019