



Appeal Decision

Site visit made on 15 July 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2024

Appeal Ref: APP/Q1445/X/23/3327291 78 Cowper Street, Hove BN3 5BN

- 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 Matt Goodman against the decision of Brighton & Hove City Council.
 - The application Ref BH2023/00058, dated 5 January 2023, was refused by notice dated 19 July 2023.
 - 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 "Dormer extension above existing outrigger."
-

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 appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
3. During the course of this appeal the appellant submitted revised drawing No 02A, received on 23 July 2024, which supersedes drawing No 02 originally submitted. Since the Council were given the opportunity to comment on this revised drawing, and have raised no objection, I am satisfied that there would be no injustice to either party. Accordingly, I have considered the appeal on this basis of this revised drawing.

Main Issue

4. The main issue is whether the Council's refusal 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 Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (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

5. The appeal property comprises a mid-terrace two storey house. It includes an original two storey rear outrigger with a mono-pitched roof set at a lower level to the main roof of the house. The property has been previously extended with a rear dormer built over the main roof of the house only. The proposed development involves the erection of a dormer above the existing outrigger, which will create one larger L-shaped dormer joined with the main roof of the dwelling. One arm of the L would extend across the main rear roof slope whilst the other arm would extend over the outrigger at a lower level due to the difference in levels between main house and outrigger. The proposed extension thus joins the main roof to the roof of the outrigger.
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'. What is in dispute between the parties is whether the proposed extension over the outrigger falls within Class A and/or Class B.
7. It is the Appellant's case that the proposed development falls within Class B only, meeting all the specified limitations and conditions, and so is permitted development. However, the Council determined that the proposed development would fall under Class A and B. In particular, the Council state that the amount of rear wall that engages with the dormer is sufficient to engage Class A, Part 1 of the GPDO, and the proposal therefore conflicts with Class A by exceeding the height of the eaves of the existing dwelling (paragraph d) and having an eaves higher than 3m within 2m of the boundary (paragraph i). They further state that the proposal conflicts with Class B, Part 1 of the GPDO, by extending beyond the outside face of any external wall of the original dwellinghouse [Conditions B.2 (b)(ii)]
8. Of particular relevance, is whether the condition B.2 (b) (ii) of Class B, Schedule 2, Part 1 of the GPDO below should apply to the proposal or not. This turns on whether the development falls within the exception highlighted below, since there is no dispute the entirety of the eaves of the original roof are not maintained or reinstated and that the dormer over the outrigger extends beyond the outside face of an external wall.

B.2(b)(ii)

Other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse.

9. The appellant draws attention to a proposed L-shaped dormer extension which was allowed on appeal at 106 Addison Road, Hove¹. For that decision, the Inspector considered the Government's Technical Guidance (TG)² which 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.
10. 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.
11. 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 proposed 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.
12. 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 the case, the description of *an enlargement which joins the original roof to the roof of a rear or side extension* applies, and therefore condition B.2(b)(ii) is not relevant to the proposal.
13. Similarly, for the reasons above and owing to the position of the proposal strictly contained on the roof of the original dwelling and outrigger only, I agree with the appellant that, the proposal falls to be considered solely under Class B, and not Class A of Schedule 2, Part 1 of the GPDO.
14. 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 the differences in height between the main roof and the outrigger. Such a restriction would prevent the majority of 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).
15. Therefore, for reasons outlined above neither condition B.2(b)(ii) of Class B nor Class A of the GPDO are relevant to this appeal.

¹ Appeal Ref: APP/Q1445/X/20/3252666

² The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

16. The Council has raised no conflict against any of the other limitations and conditions of Article 3, Schedule 2, Part 1, Class B of the GPDO, in relation to *"additions etc to the roof of a dwellinghouse"* and from my reading of the drawings and calculations submitted, I find no conflict against the relevant limitations and conditions of Article 3, Schedule 2, Part 1, Class B of the GPDO.

Conclusion

17. 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 "dormer extension above existing outrigger" 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



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 5 January 2023 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development is "permitted development" falling within Class B 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.

Signed

R Satheesan

Inspector

Date: 31 July 2024

Reference: APP/Q1445/X/23/3327291

First Schedule

Dormer extension above existing outrigger

Second Schedule

Land at 78 Cowper Street, Hove BN3 5BN

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 31 July 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

Land at: 78 Cowper Street, Hove BN3 5BN

Reference: APP/Q1445/X/23/3327291

Not to scale:



