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# Appeal Decision

Site visit made on 21 June 2011

**by D Roger Dyer BA DipArch RIBA FCI Arb Barrister**

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

**Decision date: 29 July 2011**

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**Appeal Ref: APP/Q1445/X/11/2146491**

**8 Princes Terrace, Brighton BN2 5JS**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 against a refusal to grant a lawful development certificate (LDC).
  - The appeal is made by Mr David Evans against the decision of the Brighton and Hove City Council.
  - The application Ref BH2010/03376, dated 26 October 2010, was refused by notice dated 31 December 2010.
  - The development relates to "Conversion of roofspace comprising rear dormer and flush rooflights to front roof slope."
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## Decision

1. The appeal is allowed and a Certificate of Lawfulness is attached to this letter.

## Application for costs

2. An application for costs was made by Mr D Evans against Brighton and Hove City Council. This application is the subject of a separate decision.

## Reasons

3. The appellant's property is a terraced house of two storeys above ground with a basement. It was probably built in the early part of the 20<sup>th</sup> century. The proposal is to form an additional bedroom with a small shower room in the roof space lit by a dormer window on the rear, augmented by two roof lights in the front roof. The appellant has applied for a first floor extension to create an additional bathroom but that does not form part of his application for the LDC and of this appeal.
  4. The appellant's case is that the proposed conversion of the roof space should benefit from the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008 (hereafter the "GPDO"). In particular, the appellant relies on Class B of Schedule 2, Part 1 of the GPDO which permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof provided that no part of the extended building would exceed the highest part of the existing roof. A condition of Class B is that the materials should be of similar appearance to those used in the construction of the exterior of the existing house. Other provisions of Class B are not in issue in this case.
  5. The Council's refusal to grant a certificate is based on its interpretation of the appellant's submitted drawings. It says that the plans "appear to show the roof of the dormer set above the ridge tiles" and thus it does not accord with Class B (a).
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6. The drawing of the proposed rear elevation shows the top of the dormer would be below the ridge line by about 50mm. The section drawing is less clear in that the top of the dormer is shown at the same level as the ridge tile and there is a note on that section that states "TOP OF EXSTG RIDGE TILE" from which it appears that the intention is that the highest part of the dormer should be at the same level as the ridge tile. If that is so there is nothing on the drawings, including the side elevations, which indicates that the new dormer would exceed the height of the highest part of the roof.
7. As to condition (a) of Class B, I observe that the vertical faces of the dormer are to be formed in plain clay tiles. The existing roof has clay pan tiles but they are not normally considered suitable for use on vertical surfaces. The plain tiles have a similar finish but a different profile. In the circumstances, the materials meet the condition in that they are of a similar appearance to the roof covering.
8. The Council also argues that the drawings include a proposed first floor extension. The appellant has stressed that the first floor extension does not form part of the application for the LDC. His application form addresses only the conversion of the roof space. The drawing submitted is annotated "Lawful development certificate refers to roof conversion only" and "Full planning application refers to first floor extension only". In any case there is nothing in the provisions of Class B of the GPDO that would prevent the roof conversion qualifying as permitted development if the first floor extension is granted planning permission; the cubic content of the resulting roof space is restricted by Class B.1(c) but there is no provision in Class B limiting the content of the dwellinghouse as a whole.
9. It follows that the appellant's application and the accompanying drawings are consistent with permitted development as provided in the GPDO. For all the above reasons the appeal succeeds and a lawful certificate is attached to this letter. In reaching my decision I have taken account of all other matters referred to me in writing but I have found nothing that outweighs the main planning issues that have to be considered in this case.

*D Roger Dyer*

INSPECTOR



The Planning  
Inspectorate

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## Lawful Development Certificate

APPEAL REFERENCE APP/L5810/X/11/2145154  
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 *or* 192  
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2010: ARTICLE 35

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1. **IT IS HEREBY CERTIFIED** that on 26 October 2010 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross hatched in black on the plan attached to this certificate would have been lawful within the meaning of section 191(2) *or* 191(3) of the Town and Country Planning Act 1990 as amended, for the following reason:
2. The proposed conversion of the roof space with a rear dormer and flush roof lights to the front roof slope would fall within the provisions for permitted development set out in the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008.

**D Roger Dyer**  
INSPECTOR

### ***First Schedule***

Loft conversion incorporating roof lights to the front and a dormer to the rear.

### ***Second Schedule***

Land at 8 Princes terrace, Brighton BN2 5JS

## **NOTES**

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the specified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. 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 operations which are materially different from those described, or which relate to any other land, may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a described 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 determining such about lawfulness.



The Planning  
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## Plan

This is the plan referred to in the Lawful Development Certificate dated: 29.07.2011

by **D Roger Dyer BA DipArch RIBA FCI Arb Barrister**

**Land at: 8 Princes Terrace, Brighton BN2 5JS**

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Scale: 1:500

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