



Appeal Decision

Site visit made on 17 November 2014

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 27 November 2014

Appeal Ref: APP/Q1445/X/13/2210596

37 Upper Abbey Road, Brighton, East Sussex BN2 0AD

- 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 David Phillips against the decision of Brighton & Hove City Council.
- The application Ref BH2013/01874, dated 4 May 2013, was refused by the Council by notice dated 26 September 2013.
- 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 loft conversion incorporating 2No rooflights to the front, dormer to the rear and other associated works.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the formal decision.

Main Issue

1. This is whether the Council's decision to refuse to grant a certificate of lawful use or development is well-founded.

Preliminary Matter

2. This appeal is concerned with whether what is applied for would be lawful at the date when the particular application was made. In these kind of appeals such matters as planning policy, the appearance of the proposals or the impact on its surroundings and neighbouring properties are not relevant matters. My decision has to be concerned, solely, with an interpretation of planning law.

Reasons

3. The development referred to and shown on the drawings had been carried out at the time of the site inspection. However, the evidence is that at the time of the application in May 2013 this was not the case, and the appellant states that the development was carried out from June to August of that year. The appellant states that the building was in C3 dwellinghouse use at that time, but it is clear that the building was in a C4 use, as a small house in multiple occupation, at the time of the site inspection. There are common kitchen, bathroom and lounge facilities and there were originally four bedrooms. The proposed works, and those that have been carried out, provide five bedrooms. It was confirmed as a matter of fact that the upper floor *en-suite* shower room had been constructed in the other corner of the room than shown on the

drawings, and that the rear downstairs room shown on the drawings as a bedroom was in fact in use as a common lounge, it having no wash-hand basin, unlike the bedrooms.

4. The Town and Country Planning (General Permitted Development) Order 1995 (as amended) Schedule 2 Part 1 grants certain permitted development rights to dwellinghouses. Houses in multiple occupation including those which fall within Class C4 can benefit from the permitted development rights granted to dwellinghouses by the Order.
5. As established in the case of *Gravesham Borough Council v The Secretary of State for the Environment and Michael W O'Brien (1982)*, the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. It is concluded that this is the case at the appeal property and that the property should be considered as a dwellinghouse as a matter of fact. As a result, whether C3 or C4 at the date of the application, the property benefited from the permitted development rights under Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995 as amended, and the proposed additions accord with those provisions.

Conclusions

6. 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 incorporating 2No rooflights to the front, dormer to the rear and other associated works at 37 Upper Abbey Road, Brighton, East Sussex BN2 0AD is not well-founded and that the appeal should succeed. I shall exercise the powers transferred to me under Section 195(2) of the 1990 Act as amended.

Formal Decision

7. The appeal is allowed and attached to this Decision is a certificate of lawful use or development describing the loft conversion incorporating 2No rooflights to the front, dormer to the rear and other associated works which is considered to be lawful.

S J Papworth

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 4 May 2013 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 proposed is permitted under the provisions of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995 as amended.

Signed

S J Papworth

Inspector

Date 27.11.14

Reference: APP/Q1445/X/13/2210596

First Schedule

Loft conversion incorporating 2No rooflights to the front, dormer to the rear and other associated works

Second Schedule

Land at 37 Upper Abbey Road, Brighton, East Sussex BN2 0AD

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 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, would not have been 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.

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 operation is only conclusively presumed where there has been no material change, before 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: 27.11.14

by **S J Papworth DipArch(Glos) RIBA**

Land at: 37 Upper Abbey Road, Brighton, East Sussex BN2 0AD

Reference: APP/Q1445/X/13/2210596

Scale: Unmarked



