

---

# Appeal Decision

Site visit made on 17 September 2014

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

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

**Decision date: 14 October 2014**

---

**Appeal Ref: APP/Q1445/X/13/2211056**  
**2 Highdown Road, Hove, East Sussex BN3 6EE**

- 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 Ms Shirley Waldron against the decision of Brighton & Hove City Council.
- The application Ref BH2013/03133, dated 10 September 2013, was refused by notice dated 15 November 2013.
- The application was made under 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 a proposed roof extension with mansard roof and associated alterations.

**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 as referred to by local residents, are not relevant matters. My decision has to be concerned, solely, with an interpretation of planning law.

## Reasons

3. There is nothing in the submissions to suggest that the appeal property does not benefit from permitted development rights generally and the Council's Reasons for Refusal goes into detail as to why the proposal is considered not to accord with Schedule 2, Part 1, Class A of the Order. However, the description of the proposal on the application form is with regard to Class B. Class A is described in the Order as being '*the enlargement, improvement or other alteration of a dwellinghouse*' whereas Class B is described as '*The enlargement of a dwellinghouse consisting of an addition or alteration to its roof*'. The Council's argument appears to be founded on the fact that the rear addition has a flat roof.

4. The proposal is for a mansard-style addition to the dwelling which, albeit based on the plan form of the rear addition, would be an addition also to the rear slope of the existing main roof in order to accommodate the stair access to the proposed second floor room. Whilst as a result the new roof level of the mansard over the rear addition would be above that of the existing flat roof, it would remain below the highest part of the existing main house roof.
5. Therefore no part of the house once enlarged exceeds the height of the highest part of the roof of the existing house, the wording in the Department of Communities and Local Government's publication '*Permitted Development for Householders, Technical Guidance, April 2014*' in the section providing guidance on Class B, paragraph B.1a. The addition is a single item that extends from the main roof and the wording of Class B of Part 1 does not refer to different roof sections of a dwellinghouse; it refers only to the '*highest part of the existing roof*' which in this case is the flat top of the roof of the terrace running parallel to Highdown Road. The proposed mansard would not exceed the height of that roof.
6. Confirmation of the correctness of this approach is found in the judgment given in *Hammersmith and Fulham LBC v Secretary of State for the Environment and Mrs D Davison [1994] JPL 957*. In that case it was determined, amongst other things, that the words given in paragraph B.1(a) of Class B refer to the highest part of the roof of the dwellinghouse as a whole and not to some more limited part thereof. That is precisely the situation in this appeal. Therefore as a preliminary conclusion, the proposal falls to be considered under Class B, rather than Class A, and it complies with paragraph B.1(a).
7. Looking then at the further requirements of Class B, the proposal accords with paragraph B.1(b) as no part of the dwellinghouse would, as a result of the works, extend beyond the plane of the roof slope that fronts Highdown Road, and that is the principal roof slope. It would accord with paragraph B.1(c) with regard to the original volume compared with the new one, and with paragraph B.1(d)(i) as there is not proposed to be any veranda, balcony or raised platform.
8. The plans show a new *en suite* shower room within the proposed new works on the second floor. No further details are shown as to how this new installation would be drained but paragraph B.1(d)(ii) states that development is not permitted by Class B if the works would consist of or include the installation, alteration or replacement of a chimney, flue or soil and vent pipe. This lack of information cannot however be taken to mean that a soil and vent pipe is proposed as there are other methods available for draining this type of installation, and the Council has not raised this issue. Were such a drainage arrangement to be required it would need to accord with the details set out in Class G.
9. With regard to the conditions in paragraph B.2, and the need to maintain a distance of 20cm from the eaves of the original roof, such set-backs are shown with regard to the flat roof end and side. The enlargement as a whole would breach the eaves of the main rear-facing pitched roof, where the enlargement extends over the existing rear flat roof, but that does not appear different to examples cited by the appellant, such as at Belfast Street and Stirling Place. In addition, no part of the proposed enlargement extends beyond the outside face

of the external wall of the original dwelling house, and there is no side facing window shown, either to the *en suite* shower room or otherwise.

### **Conclusions**

10. 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 proposed roof extension with mansard roof and associated alterations at 2 Highdown Road, Hove, East Sussex BN3 6EE 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**

11. The appeal is allowed and attached to this Decision is a certificate of lawful use or development describing the proposed roof extension with mansard roof and associated alterations which is considered to be lawful.

*S J Papworth*

INSPECTOR

## 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 2010: ARTICLE 35

---

**IT IS HEREBY CERTIFIED** that on 10 September 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development proposed is permitted under the provisions of Class B 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 14.10.2014

Reference: APP/Q1445/X/13/2211056

### **First Schedule**

Proposed roof extension with mansard roof and associated alterations.

### **Second Schedule**

Land at 2 Highdown Road, Hove, East Sussex BN3 6EE.

## 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 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: 14.10.2014

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

**Land at: 2 Highdown Road, Hove, East Sussex BN3 6EE**

**Reference: APP/Q1445/X/13/2211056**

Scale; not to scale

