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## Appeal Decision

Site visit made on 24 October 2018

by **V F Ammoun BSc DipTP MRTPI FRGS**

an Inspector appointed by the Secretary of State

Decision date: 30 January 2019

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### **Appeal Ref: APP/Q1445/X/18/3194987 17 Gableson Avenue, Brighton, BN1 5FG**

- 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 and Mrs J Mercer against the decision of Brighton & Hove City Council.
- The application Ref BH2017/04033, dated 06/12/2017, was refused by notice dated 10 January 2018.
- 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 *Construction of garden room.*

**Decision: The appeal is dismissed.**

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### **Application for costs**

1. An application for costs was made by Mr and Mrs J Mercer against Brighton & Hove City Council. This application is the subject of a separate Decision.

### **Preliminary matters**

2. The application was made for a proposed building, as shown on plans accompanying the application. The appeal and thus my decision relates to what is shown on these plans. At the site inspection I saw a partially completely building of the same general form and siting as that proposed by the LDC, but the status of that building is not before me for decision.
3. Similarly a lawful development certificate (LDC) appeal must be considered solely on the basis of fact and law, and irrespective of planning merit. I have therefore considered the representations received on the appeal only on that basis. In an LDC case the onus of proof lies on the appellant and the test is the balance of probability.
4. The Council's decision notice dated 10 January 2018 in part "*...refuses to certify that on 10 January 2018 ...*" In fact the date to which the decision should apply is that on which the application was made, in this case 06/12/2017, and I shall proceed on that basis.

### **Reasons**

5. The Town and Country Planning (General Permitted Development Order) 2015 as amended (GPDO) conditionally grants planning permission at Schedule 2, Part 1, Class E to buildings within the curtilage of a dwellinghouse, which are

thereby permitted development (PD). It is not in dispute that the proposed building would be within the curtilage of the semi-detached dwellinghouse 17 Gableson Avenue. The PD rights are however dependent upon compliance with all the relevant conditions/limitations set out in the GPDO. Whether there has been this full compliance is at issue in this case.

6. The Council acknowledges that the restrictions to Class E from E.1 through to E.3 are either not applicable or are met, and as there is no evidence or argument to the contrary I concur. The appeal turns on a dispute on the single matter of whether the GPDO requirement that the building be required "*.....for a purpose incidental to the enjoyment of the dwellinghouse as such*" would be met. The Courts have held that to be "incidental" the purpose must not be the provision of primary residential accommodation. National planning guidance reflects this stating in part that use as a self-contained dwelling or provision of primary residential accommodation such as a bedroom, bathroom or kitchen would not be incidental.
7. The application plans show the main garden room to have a small kitchen area comprising a worktop with a sink in it. Off the main room a smaller one contains a toilet and hand basin. A sofa, occasional table, and a round four seater dining table are shown within the main room, though as these items of furniture are not part of the building and could well change over time, I consider them illustrative rather than determinative of what would be likely if the building were constructed. The provision of a WC/hand basin and of a sink/worktop unit are however part of the LDC application proposal.
8. The Appellant has assured the Council that "*the purpose of the garden room is solely for ancillary use to the host property, there is no bed<sup>1</sup> shown on the drawings and the building will not be used for sleeping accommodation*". Such an assurance though potentially relevant if planning permission and conditions were under consideration, does not address whether as a matter of definition what is proposed is or is not incidental development as required by the GPDO.
9. The WC and hand basin room lacks the shower or bath needed to form a full bathroom, and the sink and worktop without cooking facilities would not constitute a usable kitchen. The Council refers to the ease with which a shower or a bed could be provided, but the LDC will relate to what is shown on the application plans rather than to what might later occur. Nevertheless as a matter of fact and degree I consider that the combined effect of what is shown would be sufficient to constitute a significant provision of additional primary residential accommodation. The national guidance referred to thus suggests that this would not meet the requirement to be *incidental* to the enjoyment of the dwellinghouse as such.
10. No.17 has a rear garden scaling some 25m in depth, and the appeal building would be sited less than 20m from the rear wall of the dwellinghouse. This is a distance at which one would normally expect persons frequenting a garden room to use toilet, hand basin and sink/worktop facilities within the existing dwellinghouse. I have concluded that there are no particular circumstances which might suggest that the national guidance should not apply in this case.

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<sup>1</sup> A Council letter had incorrectly stated that the application plans had shown a bed, perhaps mistaking the outline of a "roof light over".

11. It is stated that the Council's decision to withhold a LDC is inconsistent as a certificate was granted in a similar case. The Council has not responded to this claim. If it is assumed that the Council has in the past behaved inconsistently with the position it is taking in the present case, this would not, however, alter the obligation to determine a LDC case on the relevant fact and law.
12. For the foregoing reasons I have concluded that the Council's decision to withhold an LDC was well founded, and that the appeal will fail.

*V F Ammoun*

INSPECTOR

