



Appeal Decision

Site visit made on 4 May 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 14TH JUNE 2023

Appeal Ref: APP/V0510/X/22/3302734

30 Swaffham Road, Reach CB25 0HZ

- 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 & Mrs Tayleur against the decision of East Cambridgeshire District Council.
 - The application Ref 22/00228/CLE, dated 23 February 2022, was refused by notice dated 31 May 2022.
 - The application was made under section 191(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 Building works - installation of Cabrio Velux Rooflight to rear roof plane.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing development which is considered to be lawful.

Preliminary Matters

2. The appellant submitted new evidence with the appeal which was not before the Council when it made its decision. Since s195(2) of the Town and Country Planning Act 1990 (1990 Act) refers to whether or not the Council's refusal was well-founded, rather than the reasons for that decision, it is appropriate that I consider the new evidence.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development ('LDC') was well-founded. This will turn upon whether the building works described in my heading above were lawful as at the date of the LDC application, and the onus is on the appellant to make their case on the balance of probability. Whilst I sympathise with an interested party's well-being concerns, planning merits are not relevant to my assessment.

Reasons

Legislative position

4. Section 55 of the 1990 Act defines development requiring planning permission as including the carrying out of building operations. Subsection 191(2) of the

1990 Act then states that operational development is lawful at any time if: (a) no enforcement action can be taken in respect of those operations (whether because they did not involve development, or require planning permission, because the time for enforcement action has expired, or for any other reason). This is subject to the proviso that they do not constitute a contravention of the requirements of any enforcement notice in force.

5. Operations may therefore be lawful because planning permission has been granted in respect of them. This can be by deemed permission granted by Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ('GPDO'), which grants planning permission for the classes of development described as permitted development in Schedule 2.
6. Schedule 2, Part 1, Class B of the GPDO grants planning permission for 'The enlargement of a dwellinghouse consisting of an addition or alteration to its roof' subject to the conditions and limitations stated in that class. For alterations to a roof that do not enlarge the dwellinghouse, these fall to be assessed under Class C. The dispute between the parties is whether or not the appeal development is permitted development ('PD') under Class B or Class C, or whether it would require a specific grant of planning permission.

The appeal development

7. The appeal development is a 'Velux Cabrio' rooflight window installed on the rear roof slope of the appeal property. It has two opening parts: the top light is hinged at the top and opens into a horizontal position; the lower light is hinged from the bottom and opens into a vertical position with side rails.

Analysis

8. I shall firstly consider whether the appeal development represents an enlargement of the dwellinghouse falling to be considered under Class B. The Council's view is that it creates a raised platform that allows occupiers a 'greater facility' than putting their head out of the window as would be possible with a standard top hung rooflight.
9. Firstly, whether open or closed, the appeal development does not result in any increased floorspace either internally or externally at roof level. When closed, the Velux Cabrio plainly does not enlarge the dwelling from an external perspective since there is no appearance of any increase in size or volume. Leaving aside the side railings, the Velux Cabrio in its open position also no more enlarges the dwellinghouse than a standard rooflight window when open.
10. The side railings are thin vertical lengths with a slightly thicker top bar. The lengths have significant space between them, resulting in a lightweight appearance, lacking in solidity. They do not extend materially higher than the highest point of the lower window light. Taking all of these factors into consideration, I find as a matter of fact and degree that the appeal development does not represent a roof alteration that enlarges the dwellinghouse.
11. As such, the appeal development falls to be assessed under Class C. The Council accepts that the development would comply with all limitations in Class C save for C.1.(b) which states that development is not permitted if 'the

alteration would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof’.

12. I acknowledge comments from the Council that in open form, the appeal development would protrude more than 0.15 metres per the C.1.(b) limitation. However, this would also be true of a standard rooflight window. I note comments from the Council that the presence of the railings enables wider views than a standard rooflight would facilitate.
13. However, the GPDO operates by firstly requiring consideration of whether the development is an enlarging roof alteration, if not (as here), it falls to be assessed as ‘any other alteration to the roof’ under Class C. If it conforms to the closed list of limitations and conditions in Class C, it will be PD. As such, in the absence of wording in the GPDO indicating that the 0.15m limitation applies whether or not in an open position, it is logical to treat this as applying to the closed form as with standard rooflight windows. Equally, absent wording indicating that a roof alteration will not fall under Class C if its purpose involves creating a ‘balcony type structure’, it will be permissible under Class C.
14. Whilst the Council comments that the appeal development does not ‘fit comfortably’ within Class B or C, in my view the descriptor in Class C ‘any other alteration to the roof of a dwellinghouse’ is clearly wide enough to encompass the appeal development. The marketing of the product as a ‘balcony’ is not determinative of the legal position and in any event, the presence or absence of a balcony or raised platform would only be relevant if I had found that the appeal development falls under Class B.
15. As such, like my colleague Inspector in a previous appeal decision cited¹, I therefore find that the appeal development represents PD under Class C.

Conclusion

16. 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 Building works - installation of Cabrio Velux Rooflight to rear roof plane was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

V Bond
INSPECTOR

¹ APP/L5810/X/15/3002668

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 23 February 2022 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Planning permission is granted by Article 3 and Schedule 2, Part 1, Class C of the of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for 'any other alteration to the roof of a dwellinghouse' subject to the limitations and conditions in that Class.

Signed

V Bond

INSPECTOR

Date 14TH JUNE 2023

Reference: APP/V0510/X/22/3302734

First Schedule

Building works - installation of Cabrio Velux Rooflight to rear roof plane

Second Schedule

Land at 30 Swaffham Road, Reach CB25 0HZ

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, 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 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: **14TH JUNE 2023**

by V Bond LLB (Hons) Solicitor (Non-Practising)

Land at: 30 Swaffham Road, Reach CB25 0HZ

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Scale: DO NOT SCALE.

