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## Appeal Decision

Site visit made on 24 June 2025

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 July 2025

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**Appeal Ref: APP/K3605/X/23/3321779**

**2 Nightingale Road, West Molesey, Surrey KT8 2PQ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal in part to grant a certificate of lawful use or development.
- The appeal is made by Mrs Rosalie Brown against the decision of Elmbridge Borough Council.
- The application ref 2023/0260, dated 27 January 2023, was refused in part by the Council by notice dated 28 March 2023.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended) ("the Act").
- The development for which a certificate of lawful use or development is sought is extension to existing loft extension. Garden room to rear of property.

**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.

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### Preliminary Matters

1. The Council's decision letter refused part of the application and allowed part. The matter refused, and before me at this appeal, is an extension to the existing loft extension, which the Council described as enlargement of rear dormer window in its decision notice.
2. Appeals relating to a certificate of lawful use or development (LDC) are confined to the narrow remit of determining whether the Council's refusal was well founded.

### Main Issue

3. The main issue is whether the Council's decision was well founded.

### Reasons

4. Appellants are required to provide evidence that is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities. The burden of proof falls on the appellant to demonstrate that the development would have been lawful on the date the application was made (the relevant date), with evidence sufficient to justify the grant of a certificate.
5. Under Section 191(2) of the Act operations are lawful if no enforcement action may be taken in respect of them and they do not constitute a contravention of the requirements of any enforcement notice then in force.
6. There is no dispute that the proposal amounts to development for which planning permission is required, but I have not seen evidence of any enforcement notice being in force on the relevant date.
7. The primary consideration is therefore whether, at the relevant date, the development would have been granted planning permission by Article 3(1) of the

Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO"), on the basis that it would have constituted 'permitted development' under Schedule 2, Part 1, Class B of the GPDO.

8. Part 1 of Schedule 2 of the GPDO relates to development within the curtilage of a dwellinghouse. Class B of Part 1 states the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development. Paragraph B.2 imposes conditions, and the criteria in dispute between the parties are those within B.2.(b).
9. B.2.(b)(i) requires the enlargement to be constructed so that the eaves of the original roof are maintained or reinstated, and the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2m from the eaves, measured along the roof slope from the outside edge of the eaves. B.2.(b)(ii) requires that no part of the enlargement extend beyond the outside face of any external wall of the original dwellinghouse.
10. The proposed development is the removal of a dormer window and its replacement with a dormer roof extension extending beyond the main roof to meet and extend over the roof of the two-storey outrigger. None of the above requirements would therefore be met by the proposed development, but B.2.(b) also makes clear that they do not apply where an enlargement joins the original roof to the roof of a rear or side extension.
11. The parties agree that the existing 2-storey outrigger is an original part of the dwelling, and the Council therefore considers it is not an extension.
12. However, Permitted Development Rights for Householders - Technical Guidance (September 2019) (the Technical Guidance) advises that the enlarged part of the roof may join the original roof to the roof of a rear or side extension, whether the part of the house being extended forms part of the original house or is an enlargement.
13. It also specifically includes such an extension on a main roof and 'outrigger' or 'back addition' roof. Although it states that is generally referred to as an 'L-shaped dormer', the fact that the appellant has chosen not to extend to the extent that it takes on an 'L-shape' does not require a different interpretation.
14. In these circumstances the Technical Guidance considers outriggers to be 'rear extensions' for the purposes of the exemptions in B.2.(b). That is a reasonable interpretation, as original outriggers extend beyond the main body of many dwellings of this period, in a subservient manner to the main body of the house and with separate roofs.
15. Consequently, as the enlargement joins the original roof to the roof of a rear or side extension, the requirements of condition B.2.(b) do not apply to the proposed development, and in all other respects the parties agree that the requirements of Class B are met by the proposal.
16. The Council rely on an appeal decision which interprets B.2.(b) differently, and which precedes the current version of the Technical Guidance. But the two more recent appeal decisions referred to by the appellant have interpreted B.2.(b) and the Technical Guidance in the same way as I have, and I have been made aware of no judgements of the courts to the contrary.

17. At the relevant date, the development proposed would therefore have been permitted development, and planning permission would have been granted for it by Article 3(1) of the GPDO. No enforcement action may have been taken in respect of it and it did not constitute a contravention of the requirements of any enforcement notice then in force. The proposed development would therefore have been lawful on the date the application was made.

### **Conclusion**

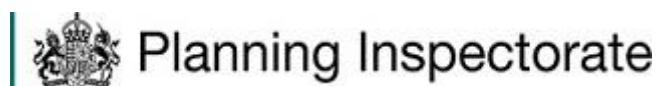
18. For the reasons given above, I conclude that the Council's refusal in part to grant a certificate of lawful use or development for extension to existing loft extension was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act (as amended).

### **Formal Decision**

19. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

*Peter White*

INSPECTOR



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## 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 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 27 January 2023 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, 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 would have been “permitted development” falling within Class B of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission would have been granted by Article 3(1) of that Order.

Signed

*Peter White*

INSPECTOR

Date: 16 July 2025

Reference: APP/K3605/X/23/3321779

### ***First Schedule***

Extension to existing loft extension

as shown on drawings referenced ‘Job No 2022-15 Dwg No’s 31, 32 and 33’ dated 27/1/23.

### ***Second Schedule***

2 Nightingale Road, West Molesey, Surrey KT8 2PQ

IMPORTANT NOTES – SEE OVER

## 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 Planning Inspectorate

## Plan

The plan referred to in my decision dated 16 July 2025

**Peter White BA(Hons) MA DipTP MRTPI**

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Not to scale

