



Appeal Decision

No site visit made

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2026

Appeal Ref: APP/H5960/X/25/3365584

5 Rowfant Road, Wandsworth. London SW17 7AP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Caroline Fulton against the decision of the Council of the London Borough of Wandsworth.
- The application ref 2025/0265, dated 27 February 2025, was refused by notice dated 22 April 2025.
- The application was made under section 192(1)(b) of the 1990 Act (as amended).
- The development for which a certificate of lawful use or development is sought is a loft conversion on the outrigger roof with hip-to-gable roof and extending the existing dormer. Insertion of two roof lights on the front slope.

Formal Decision

1. 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.

Applications for costs

2. The application for costs made by the appellant against the Council is the subject of a separate decision.

Preliminary Matters

3. The description of development cited in the LDC form differs to that contained within the decision notice and appeal form. There is no evidence that this change was formally agreed. The latter more accurately reflects the scope of the proposed plans which were submitted and determined by the Council and are now the subject of this appeal. As no parties' interests would be prejudiced, in the interests of clarity I rely upon that latter description for the purposes of the heading above.

Main Issue

4. The main issue is whether the decision of the Council of the London Borough of Wandsworth to refuse to grant a LDC, was well-founded. This issue turns on whether the proposal would be permitted development under Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the GPDO).

Reasons

5. The appeal site is a terrace dwellinghouse in Rowfant Road, close to Balham. The property has a traditional design two-storey, pitched-roof outrigger to the rear. There is a modest roof dormer extension over the original outrigger, which parties agree was added after 1948. The proposal is to provide a loft conversion over the existing rear outrigger roof incorporating a hip-to-gable roof extension.

6. Under section 192(1)(b) of the 1990 Act (as amended), if any person wishes to ascertain whether and operations proposed to be carried out in, on, over or under land, would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question. If, on an application under this section, the local planning authority is provided with information satisfying it that the operations described in the application would be lawful if instituted or begun at the time of the application, it shall issue a certificate to that effect; and in any other case it shall refuse the application.
7. Schedule 2, Part 1, Class B of the GPDO sets out that the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted development subject to the limitations and conditions as set out in the GPDO. The appellant contends that the proposed roof extension would be permitted by Class B, as the cubic content of the resulting roof space on the terrace house would not exceed the cubic content of the original roof space by more than 40 cubic metres. Both parties agree that the proposed development would accord with the main provisions of the GPDO, including the cubic tolerance. The point of dispute between the parties involves whether or not the existing modest roof dormer should be included within the calculations.
8. The starting point is the 'original roof space'. Article 2 of the GPDO provides the interpretation of original, in relation to buildings, as existing on 1st July 1948 if built prior to that date, and as built if after that date. Consequently, the existing modest roof dormer would not be considered as part of the original roof space, a view held by both parties, to which I would also concur.
9. In terms of the 'resulting roof space', interpretation is provided in Schedule 2, Part 1, Class B of the GPDO. B.2 states the resulting roof space means the roof space as enlarged taking into account any enlargement to the original roof space whether permitted by the Class or not.
10. This interpretation is echoed in the *Permitted Development for Householders: Technical Guidance*¹ (TG). The TG also states, "Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance." The Council consider that as the modest roof dormer extension is not part of the 'original roof space' in accordance with the TG it must be included in this volume allowance.
11. Both parties draw my attention to other Inspectors decisions based on similar schemes throughout the country. However, the Council specifically refer to a decision² on an LDC within the same authority.
12. Here the Inspector found the original roof space had also been enlarged. In that scenario the proposal re-used part of the enlargement, thus that extension needed to be included in the assessment of whether the resulting roof space, and whether it would have been greater than 40 cubic metres compared to the original roof space. Whilst similar, it is not directly comparable to the case before me, as the existing modest dormer would be entirely subsumed by the proposal. Nevertheless, I have reached my own views based on the evidence before me now, my own experience, and the particular circumstances of the case.

¹ September 2019

² PINS Ref: APP/H5960/X/24/3338806

13. The appellant has drawn my attention to case law in *Haverling*³ where the High Court found the purpose behind planning control in the case of B.1(d) of the GPDO was the external view of the building. This was why cubic content had to be determined on an external measurement. The judgement also held, that 'resulting roof space' did not include the space already under the roof slope, moreover it was the creation of new space in addition to this.
14. Therefore, it is clear from the above, that any addition to the 'original roof space' should be included within the 'resulting roof space', what is unclear is how the removal of any existing resulting roof space would be accounted in the calculations.
15. In this case, the proposed development would alter the current hipped roof of the outrigger to become a gable and would provide a flat roof extension over the entire outrigger at the rear of the property. The proposed extension would encapsulate the existing modest rear dormer in its entirety.
16. The purpose of the cubic content as contained in B.1(d) is to restrict incremental extensions at the roof level, as clarified at paragraph 8 of the *Haverling* judgement:

"The purpose behind the need to go back to the original building is obvious. What is not permitted by the GPDO is an addition to the roof of, let us say, under 50 cubic metres and then a subsequent addition of, again, less than 50 cubic metres, but the total amounting to well over 50 cubic metres. That is entirely understandable when one considers that the purpose behind planning control is, in this sort of case, the external view of the building in question. That is, of course, why it has been decided that cubic content must be on an external measurement."
17. The proposal does not seek to provide an incremental addition, moreover the proposal will subsume the 'resulting roof space' created by the existing modest rear dormer and enlarge it. The new 'resulting roof space' would therefore not exceed the 'original roof space' of the terrace property by more than 40 cubic metres. Given that the existing modest rear dormer would no longer exist as a result of the works, it could not be accounted for within the 'resulting roof space' calculations.
18. Overall, I find, that the erection of a loft conversion on the outrigger roof with hip-to-gable roof and extending the existing dormer, including the insertion of two roof lights on the front slope is development, which is permitted by Schedule 2, Part 1, Class B of the GPDO. As such at the date the LDC application was made, the development would have been granted planning permission by virtue of Article 3(1) of the GPDO. Likewise, there is no evidence that the development would have contravened the requirements of any enforcement notice then in force. I conclude, therefore, that at the date of the LDC application, the proposed development would have been lawful within the meaning of section 191(2) of the Act.

Conclusion

19. 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 for the proposed erection of the roof extension is not well-founded and that the appeal

³ *Haverling v Secretary of State for Communities and Local Government* [2017] EWHC (Admin) 1546

should succeed. I will exercise, accordingly, the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Robert Naylor

INSPECTOR

Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 June 2026

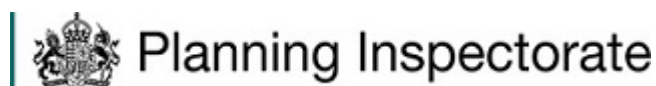
by Robert Naylor

Land at: 5 Rowfant Road, Wandsworth. London SW17 7AP

Reference: APP/H5960/X/25/3365584

Scale: Not to Scale





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

IT IS HEREBY CERTIFIED that on 28 February 2025 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in red 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 proposed erection of a loft conversion on the outrigger roof with hip-to-gable roof and extending the existing dormer and insertion of two roof lights on the front slope at 5 Rowfant Road, Wandsworth. London SW17 7AP is "permitted development" falling within Class B of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, for which planning permission is granted by Article 3(1) of that Order.

Signed

Robert Naylor

Inspector

Date: 24 June 2026

Reference: APP/H5960/X/25/3365584

First Schedule

The erection of a loft conversion on the outrigger roof with hip-to-gable roof and extending the existing dormer and insertion of two roof lights on the front slope.

Second Schedule

Land at 5 Rowfant Road, Wandsworth. London SW17 7AP

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, 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.

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.