

Appeal Decision

Site Inspection on 20 August 2015

by **John Whalley**

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

Decision date: 25 August 2015

Certificate of Lawful Development appeal ref: APP/L5810/X/15/3002668 36 St James's Avenue, Hampton Hill, Hampton, Middlesex TW12 1HH

- 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 by the London Borough of Richmond upon Thames Council to grant a certificate of lawful development.
- The appeal was made by Mr Andy Paul.
- The application, No. 14/4304/ES191, dated 15 October 2014, was refused by a notice dated 9 December 2014.
- The application was made under s.191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful development, (LDC), is sought is the retention of two Velux windows in the front roof slope of the dwelling at No. 36 St James's Avenue, Hampton Hill, Hampton, Middlesex TW12 1HH.

Summary of decision: The appeal succeeds. An LDC is attached

Appeal property

1. No. 36 St James's Avenue, Hampton Hill, is a semi-detached house. The appeal concerns 2 roof windows fitted to the pitched roof of the house facing on to St James's Avenue.

The s.195 lawful use certificate application

2. The appeal windows were manufactured by Velux and are described by that company as Velux Cabrio windows. The windows have two opening lights, one above the other. The units are fitted close to attic floor level. The upper half is top hung, the lower hinged at the bottom. When opened, the upper window is horizontal, the lower window becomes vertical; side rails open out. The effect of each window is that when fully opened, the manufacture's claim is that it "... becomes an instant balcony ...".
3. The Appellant, Mr Paul, said the appeal roof windows were permitted by the Town and Country Planning (General Permitted Development) Order 1995 as amended, (the Order), (*The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 would have applied at the time the windows were installed. That Order has since been replaced by the consolidating Town and Country Planning (General Permitted Development) (England) Order 2015 – no affecting changes would have applied.*)

4. The Council said that if closed, the windows met the limitations set out in Schedule 2, Part 1, Class C, (Any other alteration to the roof of a dwellinghouse.). In particular it would meet limitation C.1.(a) in that the windows do not protrude more than 150mm beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof. However, given the form the windows take when opened, the windows come within Class B, (The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.). The windows should be considered in their open form, unlike other roof lights and windows that open, but do not create a balcony area when opened. The main function of this type of window was to create a balcony type structure that projects in front of the roof slope, unlike a window or roof light. Seen as a Class B development, the windows failed the test of limitation B.1.(b) – in that part of the dwellinghouse has, as a result of the works, extended beyond the plane of an existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway. It also failed the test of B.1.(d)(i) – the works have involved the construction or provision of a veranda, balcony or raised platform.
5. In my view, the fitting of the appeal windows fell within Schedule 2, Part 1, Class C, (Any other alteration to the roof of a dwellinghouse), of the Order, not Class B, which deals with the enlargement of the dwellinghouse. The roof lights have clearly not enlarged the house, whether are open or closed. The open windows do no more than provide for standing on the attic floor, partly above the adjoining roof slope, by forming a balustrade around part of the existing floor area within the loft space. That provides the occupiers with a greater facility than putting their heads out of an open window. But no enlargement of the dwelling has been made. The reference by the manufacturers to their Cabrio windows providing a balcony is not relevant. A balcony has not been provided. Such a deliberation would only have arisen if the fitting of the windows were seen as a Class B development.
6. Limitation C.1.(a) to Class C says that the development would not be permitted if the alteration would protrude more than 150mm beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof. As the Council acknowledge, the appeal windows meet that limitation, which makes no reference to the situation where the window is open. Other limitations and conditions are met. My conclusion is that the appeal windows amounted to development permitted by Schedule 2, Part 1, Class C to the Order.

FORMAL DECISION

7. The refusal by the London Borough of Richmond upon Thames Council to issue a Certificate of Lawfulness for the retention of two Velux windows in the front roof slope of the dwelling at No. 36 St James's Avenue, Hampton Hill, Hampton, Middlesex TW12 1HH was not justified. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as is the relevant plan.

John Whalley

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 (as amended by Section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010

IT IS HEREBY CERTIFIED that on 15 October 2014 the operational development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, was lawful within the meaning of section 191(1)(b) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The fitting of the two Velux windows in the front roof slope of the dwelling at No. 36 St James's Avenue was development permitted by Schedule 2, Part 1, Class C to the Town and Country Planning (General Permitted Development) Order 1995 as amended.

John Whalley

INSPECTOR

Date: 25.08.2015

Reference: APP/L5810/X/15/3002668

First Schedule

The fitting of two Velux windows to the front roof slope of the dwellinghouse.

Second Schedule

The dwellinghouse at No. 36 St James's Avenue, Hampton Hill, Hampton, Middlesex TW12 1HH.

IMPORTANT NOTES OVERLEAF

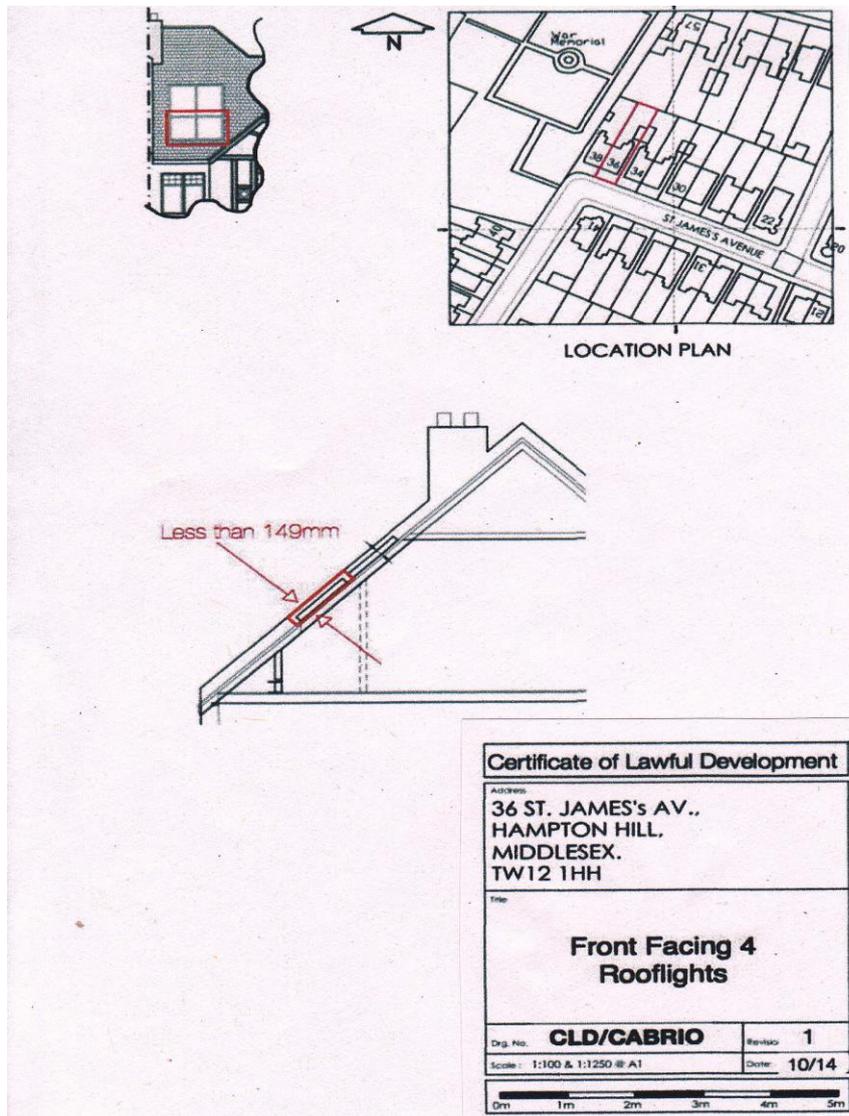
NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the operational development described in the First Schedule and specified in the Second Schedule was lawful, on the certified date, and thus would not have been not liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the operational development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development 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.

Lawful Development Certificate Plan

Appeal reference: APP/L5810/X/15/3002668

Land and building at No. 36 St James's Avenue, Hampton Hill, Hampton, Middlesex TW12 1HH.



Plan attached to the Lawful Development Certificate
Do not scale
Date:25.08.2015

John Whalley

INSPECTOR