MR AND MRS JAMES STRACHAN

IN THE MATTER OF

3 HONEYBOURNE ROAD,

LONDON NW6 1HH

OPINION

Introduction

1. I am asked to advise James and Imogen Strachan, the owners of a residential property at 3 Honeybourne Road, London NW6 1HH ("the Property") on the extent of the permitted development rights that exist for the Property under Class C of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 ("the GPDO 2015").

2. The Property lies within the local planning authority area of the London Borough of Camden ("the Council"). The Property also falls within the West End Green Conservation Area ("the Conservation Area"). The Conservation Area was designated under the Town and Country (Listed Buildings and Conservation Areas) Act 1990.

3. Mr and Mrs Strachan wish to make alterations to the rear roof of the Property by inserting what are commonly described as "inverted dormer windows". I have been provided with a copy of plans showing the proposals for these windows. They have submitted an application under section 192 of the Town and Country Planning Act 1990 ("the 1990 Act") for a certificate of lawful development for these proposals to the Council. There are no requirements for such applications to be notified to other

owners, or the public at large, as the matters to be determined on such an application are solely matters of evidence and law.

4. I am asked to advise whether or not the proposals are lawful in light of the GPDO 2015, such that a certificate must be issued by the Council.

5. For the reasons set out below, it is clear that the proposals are lawful. The Council is required to issue a certificate certifying the lawfulness of what is proposed.

Analysis

6. Section 55 of the 1990 Act introduces the concept of "development" on which planning control depends. "Development" is defined in section 55 of the 1990 Act as including either a material change of use or operational development. Subject to specific exceptions and works which are *de minimis*, planning permission is required for development in accordance with section 57 of the 1990 Act. The proposals that are the subject of this Opinion comprise potential operational development, rather than any material change of use.

7. Pursuant to section 58 of the 1990, planning permission for development can be granted in a number of ways. In addition to the method of making an application for planning permission which can then be granted by a local planning authority, the 1990 Act also provides under section 59 for the grant of planning permission by development order for certain classes or types of development. This has been repeatedly done over the years through the making of general permitted development orders by the Secretary of State. The latest order is now the GPDO 2015. Article 3 of the GPDO 2015 identifies the grant of permission for development specified in Schedule 2 to the GPDO 2015. This is subject to the identified limitations, exceptions and conditions contained in the Schedule.

8. In addition, it is relevant to note that permission granted by Article 3 of the GPDO 2015 may be withdrawn by the making of a direction under Article

4 of the GPDO 2015. This is a power which is sometimes exercised by local planning authorities in respect of designated conservation areas. However compensation is generally payable for the withdrawal of permission by means of an Article 4 direction if planning permission is later refused for development which would otherwise have been permitted (see section 108 of the 1990 Act).

9. The entitlements which arise under the GPDO 2015 are commonly referred to as "permitted development rights".

10. Part 1 of Schedule 2 to the GPDO 2015 provides for permitted development rights for development within the curtilage of a dwellinghouse. These are relevant to the Property. As is common in the GPDO, the types of permitted development rights are divided into classes. It is important to note how these classes operate.

11. Class A of Part 1 of Schedule 2 to the GPDO 2015 is entitled "*enlargement, improvement or other alteration of a dwellinghouse*". Class A therefore starts with the potential inclusion in the rights permitted of any enlargement, improvement or alteration of a dwellinghouse. However, that inclusion is then immediately subject to relevant exceptions and conditions which are set out in the remainder of the Class. Thus having set out the general entitlement in Class A, the GPDO 2015 continues as follows:

> **"Development not permitted**
>
> **A.1** Development is not permitted by Class A if—
>
> (a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use);
>
> (b) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

(c) the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;

(d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;

(e) the enlarged part of the dwellinghouse would extend beyond a wall which—

(i) forms the principal elevation of the original dwellinghouse; or

(ii) fronts a highway and forms a side elevation of the original dwellinghouse;

(f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and—

(i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or

(ii) exceed 4 metres in height;

(g) until 30th May 2019, for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and—

(i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or

(ii) exceed 4 metres in height;

(h) the enlarged part of the dwellinghouse would have more than a single storey and—

(i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or

(ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse;

(i) the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres;

(j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would—

(i) exceed 4 metres in height,

(ii) have more than a single storey, or

(iii) have a width greater than half the width of the original dwellinghouse; or

(k) it would consist of or include—

(i) the construction or provision of a verandah, balcony or raised platform,

(ii) the installation, alteration or replacement of a microwave antenna,

(iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or

(iv) an alteration to any part of the roof of the dwellinghouse."

12. I have only set out the detail of the exceptions in paragraph A.1 of Class A in order to illustrate how the permitted development rights are generally laid out in the GPDO 2015. In short, a general permitted development right is declared widely by the relevant class, but the relevant exceptions drawing in the extent of those particular rights are set out in detail in paragraph A.1. As a matter of principle, unless otherwise constrained by the relevant exception, development that falls within a description set out in any relevant class will be permitted development.

13. In addition, it should be noted that certain types of development are expressly excluded from Class A because they are the subject of a different Class under Schedule 2. Thus, for example, paragraph A.1(k)(iv) excludes from Class A "an alteration to any part of the roof of the dwellinghouse." This is because the permitted development rights in respect of alterations to the roof of dwellinghouses are the subject of more specific treatment in the separate Classes B and C to which I will turn shortly.

14. In addition to the exceptions in paragraph A.1 to Class A, it should also be noted that the Class A rights are subject to the additional exceptions contained in paragraph A.2, as well as the conditions set out under paragraph A.3.

15. Paragraph A.2 of Class A imposes some restrictions on the Class A rights in respect of dwellinghouses on "article 2(3) land". This is defined in Article 2(3) of the GPDO 2015 itself as meaning:

"The land referred to elsewhere in this Order as article 2(3) land is the land described in Part 1 of Schedule 1 to this Order (National Parks, areas of outstanding natural beauty, conservation areas etc)."

16. As the Property is within a designated Conservation Area, it is a dwellinghouse on article 2(3) land to which these additional restrictions for Class A would apply.

17. Paragraph A.3 sets out detailed conditions which apply to the Class A rights. It is unnecessary to refer to these here because the proposals for the Property are not ones being put forward as Class A permitted development.

18. With that background in mind, I turn to Classes B and C of Part 1 of Schedule 2. As already noted, Classes B and C deal with permitted development rights in respect of the roof of a dwellinghouse (such alterations have been expressly excluded from the ambit of Class A by virtue of paragraph A.1(k)(iv)).

19. Class B is entitled "*additions etc to the roof of a dwellinghouse*". As this description indicates, and the operative grant specifically provides, it is a class of permitted development right concerned with development which results in an addition to the dwellinghouse itself.

20. Class B itself begins by clearly describing the ambit of what planning permission is granted under this Class in the following way:

> **"Permitted development**
>
> **B.** ***The enlargement of a dwellinghouse consisting of an addition or alteration to its roof."***

21. It is self-evident from this definition of what is permitted by Class B that it is necessarily concerned with development which results in the "enlargement" of a dwellinghouse through an addition or alteration to its roof.

22. There is no definition of "enlargement" in the GPDO 2015, or in the parent 1990 Act. It undoubtedly bears its ordinary and natural meaning. It means an addition or alteration that actually enlarges the size of the

dwellinghouse itself. Development which does not result in any enlargement through an addition or alteration to the roof is not covered, and not permitted, by Class B of the GPDO 2015.

23. The obvious example of development which would fall within the ambit of Class B is the construction of a normal dormer window onto a sloping roof. The construction of such a dormer window would enlarge the cubic content of the dwellinghouse into the airspace beyond the existing roof. This would therefore be an addition, or alteration, to the roof which would enlarge the dwellinghouse.

24. By direct and clear contrast, the construction of what is known as an "inverted dormer window" has no such effect and is clearly outside the scope of Class B. Indeed, the construction of an inverted dormer window cuts back on the internal space of a dwellinghouse, as can clearly be seen by the plans that accompany the certificate application. There is therefore self-evidently no "enlargement" of a dwellinghouse through the insertion of a dormer window and Class B is not applicable.

25. Before turning to Class C, however, it is worth noting some of the other exceptions and conditions that apply to Class B development which confirm the natural construction of Class B that I have set out above.

26. Paragraph B.1 of Class B sets out exceptions to Class B, depending upon (amongst other things) the size and height of the additions to the roof that are proposed. Consistent with the general description and the specific wording of Class B, it is clear that these limitations are intended to limit the size of the permitted enlargement that will result from Class B development. These limitations have no natural application to development which would not result in enlargement (such as an inverted dormer window). For example:

a. Paragraph B.1(b) excludes Class B rights for development which would exceed the height of the highest part of the existing roof.

b. Paragraph B.1(c) excludes development where any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway;

c. Paragraph B.1(d) excludes development where the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 40 cubic metres in the case of a terrace house, or 50 cubic metres in any other case.

27. The same general point can be made about the nature of the conditions which are imposed on Class B by virtue of paragraph B.2. These conditions are clearly concerned with limiting the scope of development which otherwise enlarges a dwellinghouse. Thus, for example, paragraph B.2(b) imposes a condition as to how the "enlargement" must be constructed. This is clearly and necessarily predicated on the development permitted under Class B constituting an "enlargement"; it would make no real sense to development which did not result in enlargement (such as an inverted dormer window).

28. Paragraph B.1(e) is also significant. It excludes from Class B any development which would consist of, or include either (i) the construction or provision of a verandah, balcony or raised platform; or (ii) the installation, alteration or replacement of a chimney, flue, or soil and vent pipe. This is a limitation that is imposed on the grant of the Class B rights. It is a limitation which can only apply to development which would otherwise fall within the ambit of Class B (ie an enlargement to a dwellinghouse in the form of an addition or alteration to the roof). If the development in question does not fall within Class B, the limitation in paragraph B.1 has no application whatsoever. The question of whether the development in question is permitted will be governed by the terms of any other permitted development rights (such as Class C).

29. Finally, it is worth noting that Class B has no application in any event to a dwellinghouse which is on article 2(3) land. As the Property is in a Conservation Area, and so on article 2(3) land, the permitted development rights in Class B do not apply.

30. I therefore turn to Class C of the GPDO 2015. Class C is entitled "*other alterations to the roof of a dwellinghouse*". It is therefore concerned with alterations to the roof of a dwellinghouse which do not fall within Class B. The rights set out under Class C cover are described as follows:

> **"Permitted development**
> **C.** ***Any other alteration to the roof of a dwellinghouse."***

31. As the proposals for inverted dormer windows do involve an alteration to the roof of a dwellinghouse (by cutting away the roof and providing for the recessed and inset insertion of windows behind the roofplane), they fall within the ambit of Class C unless otherwise excluded by the subsequent paragraphs.

32. Paragraph C.1 sets out the limits on the Class C rights as follows:

> **"Development not permitted**
> **C.1** Development is not permitted by Class C if—
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> (a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use);
>
> (b) 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;
>
> (c) it would result in the highest part of the alteration being higher than the highest part of the original roof; or
>
> (d) it would consist of or include—
>
> (i) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
>
> (ii) the installation, alteration or replacement of solar photovoltaics or solar thermal equipment."

33. It can be seen from paragraph C.1 that there is no exclusion of Class C rights for article 2(3) land. Therefore these rights are applicable to the Property.

34. The main limitations on Class C are those set out in paragraph C.1(b) and (c). These ensure: firstly, that any development carried out by way of alteration to a roof must not 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; and secondly. the development must not result in the highest part of the alteration being higher than the highest part of the original roof. The nature of these limitations are both consistent with the permitted development rights involving alterations which do not themselves enlarge the dwellinghouse, as is the case for inverted dormer windows.

35. It is also clear that as long the inverted dormer windows proposed do not involve any element of built form protruding more than 15cm beyond the plane of the existing roof, then they will be permitted under Class C. As the proposals shown in the plans accompanying the application do not involve any such protrusion, they fall within the ambit of Class C.

36. It should also be noted that the Class C exclusions contain some key differences to the exclusions which apply to Class B.

37. Firstly, while paragraph C.1(d) (like paragraph B.1(e)) excludes from Class C any alteration to a roof if it consists of, or includes, the installation, alteration or replacement of a chimney, flue or soil and vent pipe, it conspicuously and deliberately does not have the same exclusion that appears in paragraph B.1(e) on the construction or provision of a verandah, balcony or raised platform.

38. It is obvious that if any such exclusion had been intended for Class C, it would have been expressly stated in paragraph C.1, just as it was for paragraph B.1.

39. There is, in fact, nothing surprising about this deliberate omission from paragraph C.1. Class C and the exclusions in paragraph C.1 allow alterations to the roof of a dwellinghouse, provided those alterations do not extend beyond the roofplane more than 15cm. This is the main restriction that prevents creation of any objectionable length of raised platform or balcony in practice; any platform or balcony that might incidentally be created as a result of an alteration under Class C will necessarily have to be contained within the existing roof space and plane of the dwellinghouse.

40. It can be seen from the inverted dormer window proposals for the Property that they comply with Class C and paragraph C.1. There is in fact no verandah, balcony or raised platform that is created. But even if there were (or it is considered that the flatspace within the original roof void is interpreted as such), there is no restriction in Class C on such creation where (as here) the alteration does not extend more than 0.15m from the existing roofplane.

41. Finally, I note that paragraph C.1(d) also goes on to exclude Class C if it consists of, or includes, the installation, alteration or replacement of solar photovoltaics or solar thermal equipment. This exclusion is similarly consistent with the analysis of Class B and Class C rights that I have set out above. The installation, alteration or replacement of solar photovoltaics on a roof does not result in any enlargement of a dwellinghouse. It therefore does not fall within the scope of Class B. There is, therefore, no restriction in Class B on the installation of such equipment because such development does not fall within Class B. But as such development falls within the scope of Class C (because it comprises any other alteration to a roof), the necessary exclusion is contained within Class C.

42. Class B and Class C are distinct classes. Class B only applies to development which creates an enlargement of the dwellinghouse. An

inverted dormer window plainly does not involve any enlargement of a dwellinghouse. To the contrary, it in fact reduces the size of the dwellinghouse. It is therefore within Class C, rather than Class B.

43. Finally I turn to the conditions imposed on Class C rights as contained in paragraph C.2. These are set out as follows:

> **"C.2** Development is permitted by Class C subject to the condition that any window located on a roof slope forming a side elevation of the dwellinghouse must be—
>
> (a) obscure-glazed; and
>
> (b) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed."

44. This makes clear that Class C is intended to cover development that includes insertion of windows into roofspaces (subject to the 0.15m protrusion restriction that is contained in paragraph C.1).

45. The condition that is imposed in paragraph C.2 relates to windows imposed on any side elevation, where issues of direct overlooking might otherwise arise. That condition is clearly not applicable to the proposals in the application before the Council for the Property. The proposals do not involve the creation of any window in a side elevation.

46. For all these reasons, it is clear that the proposals in the certificate application are lawful. They comprise permitted development within Class C of the 2015 GPDO. The Council is therefore obliged to issue a certificate confirming this in accordance with section 192 of the 1990 Act.

PETER VILLAGE QC

39 Essex Chambers
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7 December 2015