



# Appeal Decision

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

**Appeal Ref: APP/R5510/X/23/3317871**

**128 Pine Gardens, Ruislip HA4 9TH**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs Beck against the decision of the Council of the London Borough of Hillingdon.
- The application ref 19544/APP/2022/2423, dated 27 July 2022, was refused by notice dated 1 December 2022.
- The application was made under section 192(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 hip to gable conversion, box dormer to rear and provision of two roof lights on front roof slope.

## Decision

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

## Application for costs

2. An application for costs has been made by Mr and Mrs Beck against the Council of the London Borough of Hillingdon. This application is the subject of a separate Decision.

## Preliminary Matters

3. The appeal can be determined without the need for a site visit, as I have been able to reach a decision based on the information already available.
4. The relevant date for determining whether an LDC should be issued is the date on which the application was made. Therefore, the lawfulness for planning purposes of works undertaken to enlarge the roof of the dwelling following submission of the application to the Council cannot form part of my deliberations.
5. I have dealt with the appeal on the basis of the drawings submitted with the application. This includes revised drawing number 22/128/G/02B which, although not referred to in the officer delegated report or on the Council's decision notice, I am satisfied was nevertheless submitted before determination of the application.

## Main Issue

6. The main issue in the appeal is whether the Council's refusal of the LDC application was well-founded. This turns on whether it has been shown that planning permission is granted for the proposal by Article 3, Schedule 2, Part

1, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

## Reasons

7. The onus is firmly on the appellants to show why an LDC should be issued, the relevant test of the evidence being on the balance of probability.
8. The appeal concerns a two-storey semi-detached dwelling. Drawings submitted with the application show proposed enlargements and alterations to the roof of the dwelling consisting of a hip-to-gable extension and a rear box dormer, along with the installation of two roof lights in the front roof slope.
9. The GPDO at Article 3, Schedule 2, Part 1 grants planning permission for certain developments within the 'curtilage' of a dwelling. These include in Class B, the enlargement of a dwelling consisting of an addition or alteration to its roof and in Class C, other alterations to the roof of a dwelling. In both Classes, planning permission is granted subject to none of the limitations being exceeded, where relevant, and none of the conditions being breached, also where relevant.
10. The GPDO does not define what is meant by the term 'curtilage.' However, according to the Government's Technical Guidance<sup>1</sup> it is understood as '*...land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.*'
11. Established case law confirms that three factors—the physical layout, the ownership past and present and the use or function past and present, are relevant when determining the extent of a curtilage. Additionally, it defines three relevant characteristics of a curtilage—first, it is confined to a small area about a building; secondly, an intimate association with land which is undoubtedly within the curtilage is necessary to make the land under consideration part and parcel of that undoubted curtilage; finally, physical enclosure is not necessary<sup>2</sup>.
12. The submitted drawings show that a side wall of the rear dormer would straddle the boundary with the neighbouring attached property. However, that is not conclusive of the proposal involving works outside the curtilage of the dwelling. As already noted, ownership is not the only relevant factor when considering the extent of a curtilage. Established case law referred to above also recognises that one building and its curtilage can fall within the curtilage of another building. Furthermore, in the appeal decisions concerning similar developments supplied by the appellants, various Inspectors observed that two curtilages can overlap where, as in this instance, a party wall straddles the shared boundary.
13. I have to consider this appeal on the basis of the individual, site-specific circumstances relating to the proposal and am not bound by previous appeal decisions. Even so, it is entirely possible that the curtilage of the dwelling overlaps with that of the neighbouring property, having regard to the

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<sup>1</sup> Permitted development rights for householders: Technical Guidance MHCLG 2019

<sup>2</sup> *Methuen-Campbell v Walters* [1979] 1 QB 525; *HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310 & *McAlpine v SSE* [1995] JPL B43

construction and arrangement of the buildings. The party wall is clearly a constituent of the physical layout and structure of the dwelling and functions as an integral part of the built fabric. It stands immediately alongside and has an intimate association with other parts of the structure that are undoubtedly within the curtilage of the dwelling. The physical and functional relationship and close association with the dwelling all lead towards the view that the party wall forms part and parcel with the dwelling and falls within part of the area of land in which the dwelling sits. Consequently, as a matter of fact and degree, I find that the party wall is within the curtilage of the dwelling.

14. Most of the appeal decisions supplied by the appellants date from some years ago. The Council supplied a copy of a more recent appeal decision in which an Inspector found that a rear dormer with raised party walls would encroach on neighbouring properties and in doing so would be outside the curtilage of the dwelling. Nevertheless, given the limited details before me it is unclear whether the circumstances in that appeal, which involved a mid-terraced dwelling, are directly comparable with the proposal. Moreover, it is not clear whether my colleague was presented with similarly detailed evidence to that submitted by the appellants, which included references to established case law. As that Inspector clearly pointed out, they had to evaluate the evidence presented in relation to the particular proposal and site. As a result, the appeal decision referred to by the Council cannot be afforded any more than limited weight.
15. Since I have found that the party wall is within the curtilage of the dwelling, it is also necessary to examine the proposal against the limitations and conditions in Classes B and C. The hip-to-gable roof extension and rear box dormer do not exceed the relevant limitations of Class B in paragraph B.1 concerning their height, location and cubic content and there would be no veranda, balcony, raised platform, or chimney, flue or soil and vent pipe. There would also be no breach of the relevant conditions in paragraph B.2 concerning the use of similar external materials to the dwelling and the distance from the eaves, whilst the side elevation window to be installed would be obscure-glazed and non-opening. Similarly, the roof lights would not exceed the relevant limitations of Class C in paragraph C.1, nor breach the condition in paragraph C.2.
16. Therefore, on the balance of probability and in the light of the particular circumstances before me, the appellants have shown that the proposal is granted planning permission by the GPDO at Article 3, Schedule 2, Part 1 Class B and Class C and so is lawful for planning purposes.

### **Conclusion**

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of a hip to gable conversion, box dormer to the rear and the provision of two roof lights on the front roof slope at 128 Pine Gardens, Ruislip HA4 9TH 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).

*Stephen Hawkins*

INSPECTOR



## 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 July 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, planning permission is granted for the proposed operations by Article 3, Schedule 2, Part 1, Class B and Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

*Stephen Hawkins*

Inspector

Date: **29 October 2024**

Reference: APP/R5510/X/23/3317871

### ***First Schedule***

Hip to gable conversion, box dormer to rear and provision of two roof lights on front roof slope, as shown on drawing numbers 22/128/G/01, 22/128/G/02B & 22/128/G/03

### ***Second Schedule***

Land at 128 Pine Gardens, Ruislip HA4 9TH

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 use /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, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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.



## Plan

This is the plan referred to in the Lawful Development Certificate dated: **29 October 2024**

by **Stephen Hawkins MA, MRTPI**

**Land at: 128 Pine Gardens, Ruislip HA4 9TH**

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Scale: Not to Scale

