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## Appeal Decisions

Site visit made on 24 September 2019

**by Stephen Hawkins MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 October 2019**

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### **Appeal A Ref: APP/R5510/X/19/3223282**

#### **7 Doghurst Avenue, Hayes UB3 5BJ**

- 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 to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs Sian against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 27768/APP/2018/3799, dated 26 October 2018, was refused by notice dated 19 December 2018.
- The application was made under section 191(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 described as: "*Retrospective LDC application for existing use of rear dormer to facilitate loft conversion*".

**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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### **Appeal B Ref: APP/R5510/X/19/3223283**

#### **9 Doghurst Avenue, Hayes UB3 5BJ**

- 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 to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs Sian against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 42900/APP/2018/3800, dated 26 October 2018, was refused by notice dated 27 December 2018.
- The application was made under section 191(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 described as "*Residential*".

**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 Matter**

1. In both appeals, the description of development is taken from the respective application forms. However, it is apparent that the LDCs are in fact sought for existing operations consisting of a rear dormer, two front rooflights and a hip to gable roof extension to each of the appeal properties. The Council determined the applications on that basis and I shall deal with the appeals accordingly.

## **Main Issue**

2. The appellants did not dispute that the operations in both appeals had been substantially completed less than four years before the application date. Therefore, the main issue in these appeals is whether the appellants have shown that the operations were permitted development, having regard to Schedule 2, Part 1, Class B and Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Given their similarity, I shall consider both appeals together.

## **Reasons**

3. The properties are a pair of semi-detached dwellings. The existing operations in both appeals are alike, apart from their arrangement being handed to match each adjacent dwelling.
4. The GPDO Schedule 2, Part 1 permits specified development within the curtilage of a dwelling. Part 1, Class B permits the enlargement of a dwelling consisting of an addition or alteration to its roof, subject to certain limitations and conditions. Part 1, Class C permits any other alteration to the roof of a dwelling, subject also to certain limitations and conditions.
5. The LDC applications relate to separate operations undertaken to each host dwelling. When the operations in each application are considered separately, they do not exceed the limitations on height, location and cubic content in Part 1, Class B paragraph B.1 or breach the conditions in Class B at paragraph B.2. Also, the operations do not exceed the limitations in Part 1, Class C at paragraph C.1 or breach the conditions in Class C at paragraph C.2.
6. The rear dormers are attached to one another, straddling the shared boundary between their host dwellings and they were constructed as a single building operation. The Council contended that for this reason, the dormers were not within the curtilage of a single dwelling and thus the operations could not be permitted by Part 1.
7. At each host dwelling, the dormer extends up to the boundary of the curtilage and it shares a common boundary wall with the adjacent dwelling. Whilst each dormer is built up to the common boundary, when considered individually neither extends beyond the curtilage of its host dwelling. Therefore, each dormer is within the curtilage of its host dwelling and does not exceed the limitations or breach the conditions in Part 1, Class B. It follows that if each dormer had been constructed individually at different times, there is little to doubt that they would both have been considered as permitted development under Part 1, Class B.
8. In my view, simply excluding the dormers from permitted development on the basis set out by the Council, where the limitations and conditions of Class B have otherwise been met in respect of the dormer on each dwelling, represents an unduly restrictive interpretation of Part 1. It would effectively prevent adjoining householders from undertaking even small-scale joint schemes straddling property boundaries as permitted development. There is nothing in the GPDO to suggest that adjacent dwellings cannot be enlarged or altered under Part 1 at the same time. My attention was not drawn to anything in the

Government's Technical Guidance<sup>1</sup> which might have endorsed the Council's interpretation.

9. Moreover, I was supplied with two appeal decisions where Inspectors concluded that simultaneous construction of, respectively, an extension and an outbuilding, which both straddled residential curtilages, was permitted development under Part 1. I acknowledge that the outcome of an appeal turns on its individual circumstances. However, both cases had a similar factual background to the current appeals and a comparison could accordingly be made based on the information supplied.
10. Therefore, whilst the dormers were constructed at the same time, I am persuaded that there is no good reason why they should not be treated separately, each being an individual dormer within the curtilage of its host dwelling. In this respect, the dormers are not dissimilar to the host dwellings which, whilst attached to one another, are nevertheless regarded as each being within their own curtilage.
11. Consequently, I find that on the balance of probability the appellant has shown that the operations undertaken at both dwellings were permitted development, having regard to the GPDO at Schedule 2, Part 1, Classes B and C.

### **Conclusion**

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant certificates of lawful use or development in respect of a rear dormer, two front rooflights and a hip to gable roof extension at 7 Doghurst Avenue, Hayes UB3 5BJ and a rear dormer, two front rooflights and a hip to gable roof extension at 9 Doghurst Avenue, Hayes UB3 5BJ was not well-founded and that the appeals should succeed. I will exercise the powers transferred to me under section 195(2) of the Act as amended.

### **Formal Decisions**

13. Appeal A is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing operation which is considered to be lawful.
14. Appeal B is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing operation which is considered to be lawful.

*Stephen Hawkins*

INSPECTOR

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

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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(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 26 October 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the operations described in the First Schedule were permitted development by virtue of Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

*Stephen Hawkins*

Inspector

Date: 4 October 2019  
Reference: APP/R5510/X/19/3223282.

### **First Schedule**

A rear dormer, two front rooflights and a hip to gable roof extension.

### **Second Schedule**

Land at 7 Doghurst Avenue, Hayes UB3 5BJ.

## NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.



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## Plan

This is the plan referred to in the Lawful Development Certificate dated: 4 October 2019

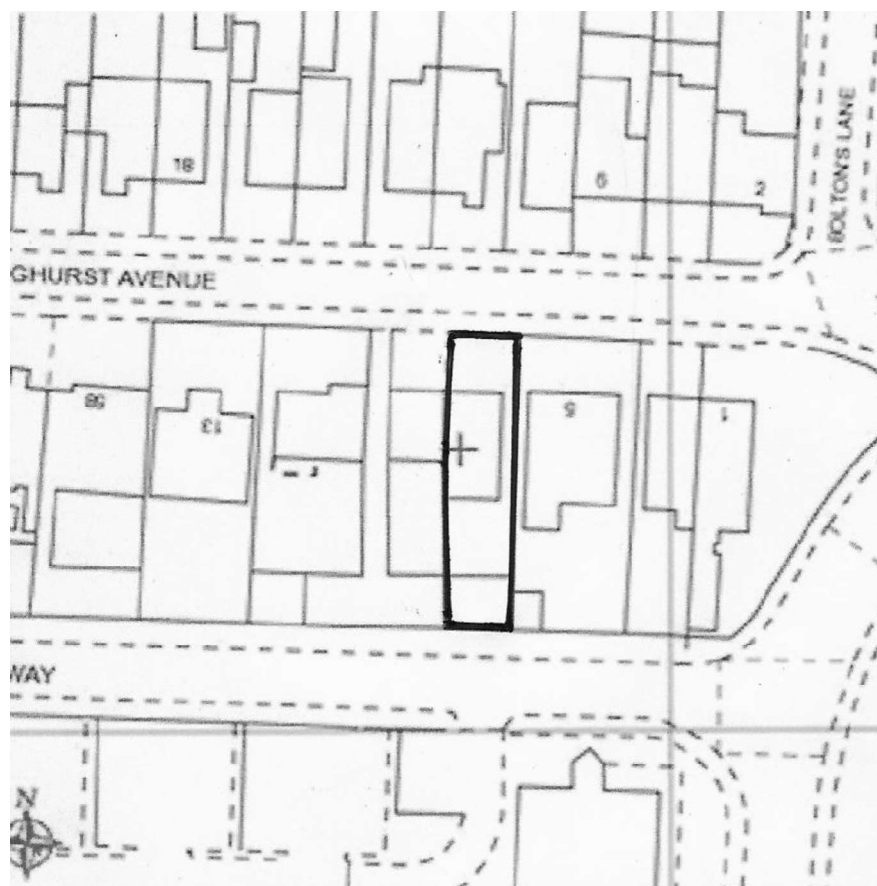
**by Stephen Hawkins MA MRTPI**

**Land at: 7 Doghurst Avenue, Hayes UB3 5BJ.**

**Reference: APP/R5510/X/19/3223282.**

Scale: Not to scale.

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## Lawful Development Certificate

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On the balance of probability, the operations described in the First Schedule were permitted development by virtue of Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

*Stephen Hawkins*

Inspector

Date: 4 October 2019

Reference: APP/R5510/X/19/3223283.

### **First Schedule**

A rear dormer, two front rooflights and a hip to gable roof extension.

### **Second Schedule**

Land at 9 Doghurst Avenue, Hayes UB3 5BJ.

## NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

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**by Stephen Hawkins MA MRTPI**

**Land at: 9 Doghurst Avenue, Hayes UB3 5BJ.**

**Reference: APP/R5510/X/19/3223283.**

Scale: Not to scale.

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