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## Appeal Decisions

Site visit made on 10 April 2018

**by Wendy McKay LLB Solicitor (Non-practising)**

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

**Decision date: 03 May 2018**

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### **Appeal A Ref: APP/R5510/W/17/3180495**

#### **4 The Fairway, Ruislip, Middlesex, HA4 0RT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required for a larger home extension under Article 3, and Schedule 2, Part 1, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr and Mrs Simon and Nancy Onyango against the decision of London Borough Council of Hillingdon.
- The application Ref 72646/APP/2017/841, dated 10 March 2017, was refused by notice dated 26 May 2017.
- The development proposed is the erection of a single storey rear extension which would extend beyond the rear wall of the original house by 4m, for which the maximum height would be 3.7m, and for which the height of the eaves would be 2.8m.

**Summary of Decision: The appeal is allowed and prior approval is deemed to be granted as set out in the Decision.**

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### **Appeal B Ref: APP/R5510/X/17/3178980**

#### **4 The Fairway, Ruislip, Middlesex, HA4 0RT**

- 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 Simon and Nancy Onyango against the decision of London Borough Council of Hillingdon.
- The application Ref 72646/APP/2017/933, dated 14 March 2017, was refused by notice dated 25 May 2017.
- 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 a single storey rear extension and conversion of roof space to habitable use to include a rear dormer, two roof lights and conversion of roof from hip to gable end with a new gable end window.

**Summary of Decision: The appeal is dismissed.**

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### **Procedural Matter**

1. The provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), under Article 3 and Schedule 2, Part 1, Part A (12) require the local planning authority to assess the proposed development solely on the basis of its impact on the amenity of any adjoining premises, taking into account any representations received. My determination of Appeal A has been made in the same manner.

2. Neither the identity of the applicant nor the planning merits of the operation, use or activity, are relevant to the purely legal issues which are involved in determining an LDC application. The consideration of the planning merits of the proposed development the subject of Appeal B is therefore outside the scope of this appeal.
3. The description of the proposed LDC development provided in the initial appeal form differs from that set out in the application and that adopted by the Council in its decision notice. I consider that the description used by the Council most accurately reflects the development sought and I shall use that description for the purposes of this appeal.

## **Reasons**

### ***Appeal A***

4. The appeal proposal comprises a single storey rear extension that would extend beyond the rear wall of the original house by 4m with a maximum height of 3.7m and an eaves height not exceeding 2.8m.
5. The Appellants submitted a prior approval application for the proposed development pursuant to the process set out by condition A.4 of Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) Order 1995 (GPDO). The relevant part of the GPDO permits larger home extensions subject to the prior approval procedure set out therein being followed.
6. The Council acknowledged receipt of the prior approval application by letter dated 10 March 2017. The letter also confirms that the occupants of the adjoining properties were notified of the proposal on that date.
7. The GPDO provides that the development that is subject to this process shall not be begun before one of the following events has occurred:
  - (a) The receipt by the developer from the Council of a written notice that their prior approval is not required;
  - (b) The receipt by the developer from the Council of a written notice giving their prior approval; or
  - (c) The expiry of 42 days following the date on which the required prior approval information was received by the Council without it notifying the developer as to whether prior approval is given or refused.
8. On 26 May 2017, the Council issued a notice advising that the prior approval application dated 10 March 2017 was refused, as the proposed development would unduly detract from the amenities of the adjoining occupier at No 2 The Fairway by reason of visual intrusion, overshadowing, loss of daylight, loss of sunlight and loss of outlook. Nonetheless, that refusal notice was issued outside the relevant 42 day period. The Council has provided no evidence to indicate otherwise.
9. I conclude, on the balance of probabilities, that the Council failed to notify the Appellants of its decision within the specified period. The proposed development falls within the scope of the permitted development rights granted by Class A.1 and the necessary application for prior approval of a larger home extension was made. On the expiry of the statutory period, without the

required notification from the Council, the permission was deemed to have been granted.

### **Appeal B**

10. The Appellants claim that the proposed development would be permitted development by virtue of Class A, Part 1, Schedule 2 of the GPDO.
11. The LDC application was refused on the sole ground that the enlarged part of the dwellinghouse would extend beyond the rear wall of the original dwellinghouse by more than 3m. The Council accepts that the roof extension would meet the relevant GPDO limitations and conditions and that the ground floor extension would also comply with the GPDO with the exception of its length.
12. The Appellants point out that the GPDO normally restricts ground floor rear extensions to 3m in length but it allows longer extensions subject to compliance with the prior approval procedure. Before the LDC application was submitted, the prior approval application the subject of Appeal A was submitted for a rear extension 4m in length. As indicated above, since the Council failed to notify the Appellants of its decision within the specified period that prior approval application is deemed to be granted.
13. The Planning Practice Guidance (PPG) advises that in determining an application for a prospective development under section 192 planning authority needs to ask *"if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"*<sup>1</sup>
14. The LDC appeal therefore falls to be assessed as at the date of the application which was the 14 March 2017. As at that date, the prior approval application had not been deemed to have been granted as the statutory period had not then elapsed. Furthermore, one of the events required to take place before development could begin would not have taken place. The proposed development would not therefore at that time have met the GPDO limitation relating to the length of the rear extension. For that reason, I conclude that the Council's decision to refuse the LDC application was well-founded.

### **Formal Conclusions**

#### **Appeal A**

15. For the reasons given above, I conclude that the appeal should be allowed and prior approval is deemed to be granted. The planning permission granted for a single storey rear extension which would extend beyond the rear wall of the original house by 4m, for which the maximum height would be 3.7m, and for which the height of the eaves would be 2.8m under Article 3 and Schedule 2, Part 1, Class A is subject to the following conditions imposed by the GPDO: A.4(13), A.4(14) and A.4(15). These conditions specify that the development shall be completed on or before 30 May 2019; that the developer shall notify the local planning authority in writing of the completion of the development as soon as reasonably practicable after completion, and such notification shall include the name of the developer; the address or location of the development and the date of completion.

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<sup>1</sup> Paragraph: 009 Reference ID: 17c-009-20140306

## **Appeal B**

16. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of a single storey rear extension and conversion of roof space to habitable use to include a rear dormer, two roof lights and conversion of roof from hip to gable end with a new gable end window was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

## **Formal Decisions**

### **Appeal A Ref: APP/R5510/W/17/3180495**

17. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3 and Schedule 2, Part 1, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the erection of a single storey rear extension which would extend beyond the rear wall of the original house by 4m, for which the maximum height would be 3.7m, and for which the height of the eaves would be 2.8m at land at 4 The Fairway, Ruislip, Middlesex, HA4 0RT in accordance with the details submitted by the application (reference 72646/APP/2017/841), dated 10 March 2017 and the plans submitted with it, pursuant to Article 3 and Schedule 2, Part 1, Paragraph A.4 of the GPDO.

### **Appeal B Ref: APP/R5510/X/17/3178980**

18. The appeal is dismissed.

*Wendy McKay*

INSPECTOR