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## Appeal Decision

Site visit made on 5 August 2025

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 02 October 2025

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**Appeal Ref: APP/C4615/X/24/3346531**

**192 Spies Lane, Halesowen, West Midlands B62 9SP**

- 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.
  - The appeal is made by Mrs Amrita Sekhon against the decision of Dudley Metropolitan Borough Council.
  - The application ref P24/0477, dated 24 April 2024, was refused by notice dated 14 June 2024.
  - 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 proposed porch on front elevation.
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### Decision

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

### Preliminary matters

2. The application was submitted under section 192 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). That is whether the operations *proposed* would be lawful. At the time of the LDC application, the porch was complete. I wrote to the parties to enquire whether the LDC application dated 27 April 2024 related to the existing build and was therefore the subject of this appeal. The appellant's agent confirmed in writing that the appellant wished the appeal to be determined based on the *existing* development. The Council confirmed that it agreed that the appeal should be determined on that basis. Consequently, the question is whether the porch, as constructed, would have been lawful on the date of the application.
3. Section 191(2) of the 1990 Act states that for the purposes of this Act, uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).
4. In this type of appeal, the onus of proof is firmly upon the appellant and the relevant test is on the balance of probabilities. The planning merits of the development are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act. I must examine the submitted factual evidence, the history and planning status of the site and apply relevant law or judicial authority to the circumstances of this case.

5. The porch is the subject of an enforcement notice issued by the Council on 6 February 2024. The notice was appealed and is the subject of a separate decision refs: APP/C4615/C/24/3340468 and APP/C4615/C/24/3340469. The notice was not in force at the time of this decision.

### **Main issue**

6. As the appeal is confined to the narrow remit of reviewing the Council's decision, the main issue is whether the decision not to issue an LDC was well-founded.

### **Reasons**

7. The appeal property is a pitched roof, inter-war detached bungalow set back from the highway. It is located at the end of a row of 8 similar styled bungalows. The appeal relates to a flat roof addition constructed centrally outside a former external door on the front elevation of the bungalow facing the highway. Historical records for the property show that the bungalow had previously been extended to the front. There is no evidence to suggest that these former additions to the front elevation are not lawful due to the passage of time.
8. Article 3 of the GPDO grants permission for classes of development described as permitted development in Schedule 2 to the Order. Part 1 of Schedule 2 relates to development within the curtilage of a dwellinghouse.
9. The appellant's case is that what has been erected is a porch, therefore it falls to be considered under the terms of Class D, 'Porches'. For its part, the Council contends that what has been constructed is an extension to the front of the property and that it should be considered in light of both Class A and Class D of the GPDO. Class A addresses the enlargement, improvement or other alteration of a dwellinghouse. Class D specifically addresses the erection or construction of a porch outside any external door of a dwellinghouse. It is the Council's case that the front addition would not benefit from PD rights by virtue of Class A and Class D.
10. The Council's reason for refusing to issue a certificate was that the porch was attached to an existing single storey extension to the front of the dwelling, and thus it extends beyond a wall which fronts a highway and forms the principal elevation of the original dwellinghouse. Given this, the Council considered the development to be an extension to the dwellinghouse which should be assessed under Class A.
11. If this addition to the front of the dwelling were to fall under Class A, by reason of it being attached to the earlier extension, the Council's position would be correct. It would not be permitted development as it would result in an extension beyond a wall which forms the principal elevation of the original dwellinghouse. However, the permitted development right under Class D reads '*The erection or construction of a porch outside any external door of a dwellinghouse*'. The key words from this class, in respect of this appeal, is that the permitted right relates to "*any external door*".
12. Although being attached to an earlier extension, the construction of the porch is a distinct and separate operation from it. What has been erected is clearly a porch that was constructed outside the external door to the front of the bungalow. Therefore, it falls to be assessed against the permitted development right conferred by Class D, which is the relevant class for this development. The right in

this class is subject to limitations; should a porch not accord with these, it would not be permitted development. In its submissions, the Council finds that the porch would not accord with the size, siting limitations in Class D in that the ground area of the structure exceeds 3 square metres. I noted the measurements taken during my visit and I viewed the development from inside the property to enable me to conclude that on the balance of probabilities, and taking the available evidence into account, the porch would have been lawful at the time of the LDC application.

13. I find that there is nothing in the wording of Class D to invoke the terms of Class A should a porch be attached to a previous extension, neither has the Council drawn my attention to any case law or appeal decisions to lead me to find otherwise. Class D is a stand-alone permitted development right. In reaching my finding here, I have also taken account of the Government's "Permitted development rights for householders - Technical Guidance"<sup>1</sup>.

### **Conclusion**

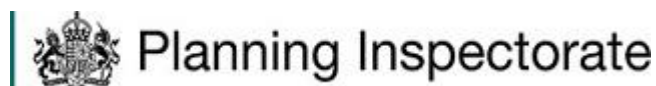
14. For the reasons given above, I conclude, on the available evidence, that the Council's refusal to grant a certificate of lawful use or development for the porch on the front elevation was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

*S A Hanson*

INSPECTOR

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<sup>1</sup> 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 24 April 2024 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The existing porch constitutes development granted by virtue of the provisions of Article 3 and Schedule 2, Part 1, Class D of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

*S A Hanson*

Inspector

Date 02 October 2025

Reference: APP/C4615/X/24/3346531

### ***First Schedule***

The existing porch on the front elevation

### ***Second Schedule***

Land at 192 Spies Lane, Halesowen B62 9SP

IMPORTANT NOTES – SEE OVER

## 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 operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations which are materially different from that described, or which relate to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

## Plan

This is the plan referred to in the Lawful Development Certificate dated 02 October 2025

by **S A Hanson**

**Land at: 192 Spies Lane, Halesowen B62 9SP**

**Reference: APP/C4615/X/24/3346531**

Scale: Not to Scale

