



Appeal Decision

Site visit made on 23 June 2026

by Grahame J Kean B.A. (Hons), Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2026

Appeal Ref: APP/X1925/X/25/3359692

41 The Avenue, Hitchin SG4 9RQ

- 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 Mrs Kirsty Martindale against the decision of North Herts Council.
 - The application ref 24/01945/LDCE, dated 30 August 2024, was refused by notice dated 25 October 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) (the "1990 Act").
 - The development for which a certificate of lawful use or development is sought is: replacement of roof fascias, soffits and bargeboards. Replacement of existing render finishes. Replacement of windows.
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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 operations which are found to be lawful.

Preliminary matters

2. Both parties had indicated that the relevant part of the appeal site could be seen from public land and it was not essential to enter the site. On my inspection the replacement works were clearly visible on the garage to the front of the plot and mostly to the house itself. I was unable to see the rear of the house, but I have had the benefit of considering the existing and proposed drawings submitted in the appealed application. So far as I could see, the property has been subject to the works therein described and I have been given no reason to suppose that the parts not visible to me have not also been subject to those works.
3. I should also note that there appears to be an error in the existing and proposed drawings in that the garage door is not shown in white in either drawing, whereas it was when I inspected. Furthermore, this appears to have been the pre-existing position judging from publicly available Google images from previous years including 2020, which image also provides a clear picture of the scalloping detail of the pre-existing bargeboards on the main house.

Legal background

4. By s191(2) of the 1990 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) and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5. By s57(1) of the 1990 Act planning permission is required for the carrying out of any development of land. "Development" is defined under s55 as follows:
"(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land..."
6. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Schedule 2, Part 1, Class A. Class A permits the enlargement, improvement or other alteration of a dwellinghouse but subject to limitations and conditions. A relevant limitation is found in Class A.2(a):
"In the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if— (a) it consists of or includes the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles"
7. The appeal site is on Article 2(3) land because it is in a conservation area, namely the Hitchin Conservation Area.
8. By s55 (2) certain operations or uses of land shall not be taken for the purposes of this Act to involve development of the land, including —
"(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—...(ii) do not materially affect the external appearance of the building."
9. In *Burroughs Day v Bristol City Council* [1996] 1 P.L.R. 78 (QBD) it was held that a change in external appearance had to be judged in relation to the building as a whole, not by reference to a part of the building taken in isolation but Lieven J in *London Borough of Haringey v Secretary of State for Housing Communities and Local Government, Paul Muir* [2019] EWHC 3000 (Admin), stated:
"Given the statutory definition in s.336 [building includes part of a building] it is open to the decision maker to take into account the impact on that part alone, and to the degree the Judge in Burroughs Day was suggesting that as a matter of law (rather on the facts of the case) that was not material, in my view he was wrong."
10. In *Dharmeshkumar v Secretary of State for Housing, Communities and Local Government & Anor* [2025] EWHC 25123 (Admin) the court, after reviewing these authorities, observed at paragraph 109:
"It follows from this analysis that submissions about what proportion of the building has been affected by unauthorised works is an unnecessary distraction. The point to be considered is: how material is the change to the appearance of such part of the building as has been changed?"

Main issue

11. The main issue is whether, on the facts of the case and relevant planning law, the existing work identified in the LDC application is lawful. Planning merits are not relevant in this appeal. The issue is determined on the balance of probabilities and ultimately irrespective of the reasons given by the Council in its determination of the application.

12. The Council did not provide a statement. It relied on the officer's report that dealt with the application. The application form had stated in terms that the changes required "*do not require planning permission but involve minor changes to the external appearance of a building in the conservation area*". However, the Council failed to consider that matter. Its report assumed that planning permission was required and it presented the issue as a binary one of whether the works required a specific planning permission or benefited from the deemed permission inherent in the permitted development legislation.
13. Therefore, the report failed to deal with the prior question which was fairly and squarely before them, ie whether the works amounted to development in the first place, which question I shall now address.
14. Accordingly, there are two key questions to determine on the facts of this case, namely whether under the s55(2) exemption the works constitute works of maintenance, improvement or other alteration and secondly, whether they constitute works which do not materially affect the external appearance of the building (s55(2)(a)(ii)).
15. The works described in the application are threefold:
 - replacement of roof fascias, soffits and bargeboards;
 - replacement of existing render finishes; and
 - replacement of windows.
16. The timber fascias, soffits and bargeboards on the house and garage have been replaced with new white uPVC. The bargeboards are straight, rather than scalloped as existed. The existing render on the walls has been removed and replaced with new through-coloured render. The existing timber windows to the house and garage have been replaced using new white uPVC. The fenestration patterns have remained as they pre-existed.
17. The fact that the property is in a conservation area is not directly relevant to the statutory tests to be applied of whether there are works of maintenance, improvement or other alteration and if so whether they materially affect the external appearance of the building or not. In *Burroughs Day* the Court said (at paragraph 78):

"Materiality" must in every case take into account the nature of the particular building which it is proposed to alter. It is obvious that what is not a material alteration to the external appearance of a factory ... may be a material alteration to the external appearance of an 18th century house (whether or not it is listed or in a conservation area)".
18. Indeed, in *Muir*, which concerned uPVC windows in a conservation area, the Inspector had wrongly considered the wider area in judging the external effect on the building, analysing the impact on part of the conservation area, rather than a lawful analysis of the test in s55(2)(a)(ii).
19. The appeal property is a large, detached dwelling with a separate garage at the front of the plot. It is of relatively modern construction, the roofs of both structures are natural slate, and the walls are of red brick and white render, elements that have been retained subsequent to the works. Whilst the windows have been replaced in uPVC, the original openings and fenestration detail remain unchanged.

20. Furthermore, the appellant explained that:

“the render work was maintenance rather than new cladding to the property, the old sand and cement render being in poor condition and visually unappealing. Therefore, the render was stabilised with mesh and a new coat of modern acrylic render applied in the same colour. No new areas were covered and it is also said that the property looks the same as before the works.”

21. The property does not look exactly the same as before the works, but the works have resulted in few visible changes which are very slight in appearance against their respective hosts, the main house and garage. Having regard to what I saw and the submitted documentation including the existing and proposed (ie as now built) drawings, I find that as a matter of fact and degree and planning judgement, the replacement works fall within the category of operations for the maintenance, improvement or other alteration of those buildings. Furthermore, I find that the works have not materially affected the external appearance of the respective buildings of which they form part.
22. Therefore, the works are lawful under s191(2) because they did not involve development or require planning permission

Conclusion

23. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for is 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).

Grahame J Kean

INSPECTOR

Plan

This is the plan referred to in the Lawful Development Certificate dated: 13 July 2026

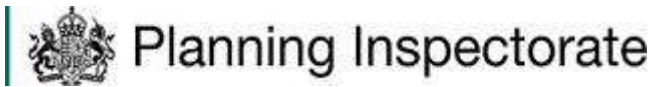
by Mr Grahame J Kean

Land at: 41 The Avenue, HITCHIN, SG4 9RQ

Reference: APP/X1925/X/25/3359692

Scale: Not to Scale





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

IT IS HEREBY CERTIFIED that on 30 August 2024 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:

The replacement works fall within the category of operations for the maintenance, improvement or other alteration of those buildings of which they form part and have not materially affected their external appearance. Therefore, the works are lawful under s191(2) because they did not involve development or require planning permission.

Signed

Grahame J Kean

Inspector

Date: 13 July 2026

Reference: APP/X1925/X/25/3359692

First Schedule

Replacement of roof fascias, soffits and bargeboards. Replacement of existing render finishes. Replacement of windows.

Second Schedule

Land at 41 The Avenue, Hitchin SG4 9RQ

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 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.