

# Appeal Decision

Site visit made on 18 July 2017

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

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

**Decision date: 28 July 2017**

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## **Appeal Ref: APP/L3625/X/17/3167863**

### **69 Bell Street, Reigate RH2 7AQ**

- 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 J Bader (Cleaners) Ltd against the decision of Reigate and Banstead Borough Council.
  - The application Ref 16/01252/CLP, dated 6 June 2016, was refused by notice dated 25 July 2016.
  - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The proposed development for which a certificate of lawful use or development is sought is the replacement of timber windows and guttering.
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### **Decision**

1. The appeal is dismissed.

### **Background information**

2. The 2 storey appeal site is a 1960s building with a shop unit (currently a dry cleaning use) at ground floor level and residential accommodation above. It is located within a secondary shopping area to the south of the town centre, opposite to the Priory Park and it lies within the Reigate Town Centre Conservation Area (RTCCA).
3. The LDC application related to the replacement of all windows to the building excluding the shop front and to the replacement of guttering. Sliding timber sash windows were proposed for the front elevation and were stated to replicate those existing with the exception that the new windows would be double glazed. The other windows would be uPVC double glazed windows and it is also proposed to replace the rear door with a uPVC one of similar appearance. As well as the completed application form, window information provided by Mersham Glass and Guttering information, by Gutterworks, was also submitted to the LPA.
4. The application was refused by the LPA on the basis that the works were considered to involve development as defined under Section 55 of the Town and Country Planning Act 1990 (the Act) and that they failed to comply with the criteria for permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Article 3 and Schedule 2, Part 7, Class A (non-domestic extensions, alterations etc) of the GPDO was referred to in the refusal notice and the LPA stressed that the development would be on article 2(3) land and would involve alteration above ground floor level.
5. On behalf of the appellant it is contended that the Council was incorrect in its assessment that the works would constitute development for the purposes of section 55 of the Act. It is considered that the works would not materially affect the external appearance of the building and that the Council compounded their error (of concluding

that the works did comprise development under section 55) by applying an unreasonable standard relating to the replacement works. It is further stressed that the proposals would greatly increase the quality of the building for future occupiers as well as reducing the requirement for future maintenance.

## Reasons

6. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason(s) for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered. In any LDC application, an applicant is required to provide evidence that is sufficiently precise and unambiguous to justify the grant of a certificate '*on the balance of probability*'. The burden of proof is firmly on the applicant and a LPA must be supplied with sufficient information to satisfy them that the proposed development is/was lawful at the date of the application(s).

7. I have noted the Council's views on the materials and components which they consider ought to be used. I have also noted the contention set out on behalf of the appellant that the Council's requirements and expectations are set too high. However, my remit is not to consider whether or not planning permission should be granted for the works, but whether or not permission is required in the first instance. Permission is required if the works are considered to constitute development and do not constitute permitted development. The first question, therefore, is whether or not what is proposed constitutes development for the purposes of the Act.

8. Section 55 sets out the meaning of '*development*' as the '*carrying out of building, engineering, mining or other operations in, on, or under land.....*'. At section 55 (1A) it is indicated that '*building operations*', amongst other things, involve '*(d) Other operations normally undertaken by a person carrying on business as a builder*'. In this case one would assume that a builder would be likely to carry out the works and specifications for the works were submitted as part of the application.

9. At section 55 (2)(a)(ii), it is indicated that the carrying out for the maintenance, improvement or other alteration of any building works which '*do not materially affect the external appearance of the building*' shall not be taken for the purposes of the Act to involve development of the land. On behalf of the appellant it is stressed that the works constitute straightforward replacements of the gutters and windows and that the works would not materially affect the external appearance of the building. It is not accepted, therefore, that what is proposed does constitute development.

10. Having visited the site and considered the details of the LDC application I do not consider that the proposals for replacement guttering would materially affect the external appearance of the building. I have note the Council's concerns and their view that cast iron or cast aluminium should be used, but the proposed black coated aluminium guttering, in my view, would be indistinguishable from the existing guttering. Thus this aspect of the proposal would not alter the external appearance.

11. Similarly, if narrow section uPVC windows were to replicate the existing modern framed timber windows I also consider that the external appearance of the building would not be materially changed. In principle I consider that the replacement of the rear windows in uPVC would be acceptable. Finally, if the front windows replicated the existing windows (as the stated intention) then these too would be acceptable. Overall, therefore, if the works were to be carried out whereby the proposed gutter profile and colour; the rear uPVC windows (and rear door) and the front windows all matched the existing components in terms of frame sizes, opening lights, and similar profiles, the external appearance of the building would not be materially changed.

12. However, the information submitted in support of the application is far from being precise and unambiguous. I found it difficult on site to match all of the rear windows with those shown on the submitted window drawing/schedule. Although some were recognisable as replacements for those existing, some of the latter did not match any of the ones shown on the schedule. Of more concern, however, was the submitted application information relating to the more prominently positioned timber, sash and case, front windows at first floor level. There are three such windows and not just two as referred to and shown on the window schedule. The mistake regarding the number is not in itself significant. But the information provided is not sufficient or acceptable.

13. The existing front timber windows are 6-light over 9-light, sliding, timber, sash and case windows with visible timber frames, boxing and sills. The 2 proposed windows are shown as 8-light over 12-light and would thus be completely different in appearance to what exists. Taken in the context of the rest of the front timber windows in the other properties to the terrace, this would drastically alter the character and appearance of the frontage.

14. In my view such a change in window appearance would most certainly, and materially, alter the external appearance of the building. The works would constitute development under section 55 of the Act and, because they are above ground floor level within the RTCCA, they would not constitute permitted development. It follows that planning permission would be required for the works and, therefore, that what was proposed on the basis of the LDC application would not have been lawful for planning purposes on the date the application was made.

15. I acknowledge that any discrepancies in the submitted application information might well have been able to have been clarified but I am only empowered to consider the LDC application on the basis of what was submitted to the LPA and upon which they made their decision. I have disagreed with the LPA with regard to the effect of the proposed guttering and the principle of the use of uPVC windows to the rear.

16. However, I do not consider that a LDC should be issued on the basis of such imprecise and ambiguous information. In my view, in situations such as this, sufficient information should be provided to indicate to a LPA the precise and accurate appearance of each proposed new window or door component. Only then would a LPA be able to properly establish whether a proposal would materially alter the appearance of a building. This appeal, therefore, must fail and a LDC will not be issued.

### **Other Matters**

17. In reaching my decision I have taken into account all of the other matters raised by the Council and on behalf of the appellant. These include the grounds of appeal and detailed statements; all references to the 1990 Act; the appellant disagreements with the views of the Conservation Officer; all references to the GPDO; the application submissions and the reference (Appendix 1 to Appellant's statement) to a previous appeal decision relating to the renewal of windows (APP/L5240/A/11/2163831) in a property at Coulsdon, Surrey.

18. However, none of these carries sufficient weight to alter my conclusions that the proposals as submitted would not have been lawful at the time of the LDC application. Nor is any other matter of such significance so as to change my decision that the appeal should be dismissed.

*Anthony J Wharton*

Inspector