



Appeal Decision

Site visit made on 20 January 2020

by Thomas Shields DipURP MA MRTPI

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

Decision date: 13 February 2020

Appeal Ref: APP/Y2620/X/19/3234869

7 The Street, Helhoughton, Fakenham, NR21 7BJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Miss Kathryn Auburn against the decision of North Norfolk District Council.
 - The application Ref EF/19/0933, dated 12 June 2019, was refused by notice dated 7 August 2019.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a LDC is sought is internal alterations, replacement windows and door.
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Decision

1. The appeal is allowed and attached to this decision is a LDC describing the proposed development which is considered to be lawful.

Appeal site and procedural matters

2. The appeal building, No. 7 The Street, is an end of terrace two storey cottage which fronts directly onto the public highway and is located within the Helhoughton Conservation Area.
3. Although the Council's decision notice does not refer to the replacement front door it is referred to in their appeal statement. For clarity, I include the front door in my assessment as it was also part of the LDC application.

Main Issue

4. This is whether the Council's decision to refuse a LDC was well founded. There is no disagreement that the internal works would be lawful, hence the main issue turns on whether the proposed removal of the 6 existing timber windows and door and then installation of PVCu double-glazed replacements would be lawful.

Reasons

5. The proposed door and window frames would be fitted into existing openings without altering brickwork. They are shown in the submitted drawing and reference is made to the PVCu windows in the adjoining terraced property as illustration of their finished appearance.
6. Excluded from the definition of "development" at s55 of the Act are certain operations and uses including (s55(2)(a)(ii)), *the carrying out for the*

maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building.

7. The Council's case in summary is that the works would materially affect the external appearance of the building and so would not be excluded "development" within s55(2)(a)(ii). Additionally, that they would not benefit from the planning permission granted by Article 3(1) and Class A, Part 1, Schedule 2, of the GPDO¹, generally referred to as "permitted development".
8. In deciding whether works materially affect the external appearance, a measure of subjective judgement is involved. The Courts² have established that such judgment will involve consideration of the nature of the building, the nature of the alterations, and the change to the external appearance of the building *as a whole*, and the changes must be visible from a number of vantage points.

Rear windows

9. Existing windows to the rear are a mixture of both timber and PVCu. While the proposed PVCu windows differ from the existing rear timber windows, they would be similar to those in the rear conservatory and extension. Moreover, none of the windows proposed at the rear would be readily visible from public vantage points. Consequently, as a matter of fact and degree, I consider that they would not materially affect the external appearance of the building as a whole. Thus, they would fall within the exclusion at s55(2)(a)(ii) and hence not constitute "development". This part of the proposed scheme at the rear would therefore be lawful.

Front windows and door

10. Being located at the front, facing the public highway, the windows and door (both existing and proposed) are significant features of this relatively small building's appearance. The two existing single-glazed windows are side-opening white painted timber casements, comprising a double bay at first floor and a wider and taller three bay at ground floor. The horizontal and vertical glazing bars are functional by separating each casement at first floor into 12 individual panes, and at ground floor into 15 panes.
11. Different to the existing windows, the replacements would comprise frames containing side opening casements in combination with a top hung transom. Also, the decorative glazing strips would provide fewer 'panes' in each casement than currently; 6 at first floor and 8 at ground floor. The frames would have a slightly thicker profile and shinier appearance and, as is the case with most double glazed windows, the two layers of glass would give off a degree of "double register" in angled views of them. While I agree with the appellant that the proposed windows and door would be generally similar to existing, I consider that the change in appearance would nonetheless *materially affect the external appearance of the building as a whole* and thereby constitute "development" as defined.
12. The existing door is solid with inset relief panels below a semi-circular segmental fanlight. The proposed door would be composite PVCu and very similar in design. It would not, by itself, result in a significant change in

¹ Town and Country Planning (General Permitted Development) (England) Order 2015

² *Burroughs Day v Bristol CC* [1996] 1 PLR 78; 1 EGLR 167

appearance. However, in tandem with the proposed windows it would contribute to the overall change in appearance of the front elevation, and hence the building as a whole.

13. Having established that the proposed front windows and door would constitute s.55 development I turn next to the question of whether they would be permitted development.
14. Class A of the GPDO permits alterations to a dwellinghouse, subject to limitations and conditions set out at A.1 to A.4. The Council consider that the works would not comply with condition A.3(a) which states –

the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse

15. The Council argue³ that the windows and door would be a *materially different design, appearance and material* to the existing windows and door, and that they would not be *like-for-like*. However, that is not the specific wording of A.3(a) which requires only that “*materials...must be of a similar appearance*”. Clarification of the interpretation and application of A.3 is provided in the Technical Guidance (TG)⁴. It states –

This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials. (Underlining my emphasis).

16. The TG goes on to give an example in respect of replacement windows –

It may be appropriate to replace existing windows with new uPVC double-glazed windows ... What is important is that they give a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of the frames.

17. In this context I am satisfied that although the proposed windows (and door), would not be of the same materials or exactly the same design as existing, they would nonetheless have a *similar visual appearance in terms of their overall shape, colour and size of frames*.
18. I therefore find that the proposed windows and door to the front elevation would be permitted development and therefore lawful.

Conclusion

19. For the reasons given above I conclude on the evidence now available that the Council’s refusal to grant a LDC in respect of internal alterations, replacement windows and door at 7 The Street, Helhoughton was not well-founded and that the appeal should succeed. I exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Thomas Shields

INSPECTOR

³ Officer Report and Appeal Statement of Case

⁴ *Permitted development rights for householders - Technical Guidance*, MHCLG, 2019 [unaltered relating to A.3 from previous issue]

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 12 June 2019 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reasons:

1. The proposed windows to the rear would be an operation within s55(2)(a)(ii) of the Act; works which do not materially affect the external appearance of the building. Thereby they would not constitute "development" requiring planning permission and would be lawful.
2. The proposed windows and door to the front would benefit from planning permission pursuant to Article 3(1) and Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Thomas Shields
Inspector

Date 13 February 2020

Reference: APP/Y1945/X/18/3208872

First Schedule

Internal alterations, replacement windows and door

Second Schedule

Land at 7 The Street, Helhoughton, Fakenham, NR21 7BJ

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 13 February 2020

by Thomas Shields DipURP MA MRTPI

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