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## Appeal Decision

Site visit made on 2 September 2020

**by Sarah Dyer BA BTP MRTPI MCMi**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 September 2020**

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**Appeal Ref: APP/C1950/X/19/3232236**

**12 Danesbury Park, North Ride, Welwyn AL6 9SA**

- 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 Mrs Lindsey Demetriou against the decision of Welwyn Hatfield Borough Council.
  - The application Ref 6/2019/0142/LAWE, dated 23 January 2019, was refused by notice dated 30 April 2019.
  - The application was made under section 191(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 was described in the application as:
    - Replacement of all windows of the property from timber material to UPVC material
    - Replacement of the rear garden door from timber material to UPVC material
    - Changing the opening mechanism for the rear bedroom windows on the first floor of the property
    - The work which has been carried out retains the original colour of the previous windows installed at the property and retains the original opening mechanism for all windows, excluding the rear first floor bedroom where the opening mechanism has been modified to conform with means of escape in the event of a fire.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Council amended the description of the development to 'certificate for replacement of windows' when it determined the application. This description does not include the rear garden door which was included in the application. I do not consider that either of the parties would be prejudiced by my consideration of the replacement door in addition to the replacement windows. I have determined the appeal on that basis.
3. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended (the Act), which relates to an application for a Lawful Development Certificate (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.

## **Main Issue**

4. The main issue is whether the Council's decision to refuse the application for an LDC was well-founded.

## **Reasons**

5. Section 191(2)(a) of the Act states that operations are lawful at any time if no enforcement action may then be taken in respect of them because, amongst other things, they did not involve development. It is on this basis that the appellant has submitted her appeal. The view of the appellant is that the works which have been carried out do not constitute development because they do not materially affect the external appearance of the building. By contrast the Council considers that the works amount to development in the form of an alteration to a dwelling.
6. 12 Danesbury Park (No.12) is one of a group of dwellings which form a courtyard, behind the former Danesbury Park hospital which is a listed building. With the exception of the appeal site, the other buildings in the group appear to have white painted timber windows and doors of the same design. The windows and door which have been installed at No. 12 are different to those in the other houses in a number of ways.
7. The ground floor windows in the adjacent dwellings have nine panes of equal size, however the replacement windows in No. 12 have six panes of equal size and three smaller panes in the upper part of the window. Also, there is a difference in the width of the transoms and mullions when the two window designs are compared with the replacement windows having a thinner profile.
8. The panes of glass in the replacement rear door have a horizontal alignment in contrast to the vertical alignment which is present in the rear doors serving the neighbouring houses. At first floor level there are no 'horns' on the replacement windows and the alteration in their opening mechanism would result in them having a different appearance to open windows in the rest of the terrace.
9. In combination the differences between the replacement windows/door at No. 12 render them materially different to those which are present on adjacent buildings. There is no evidence before me to suggest that the appearance of the windows/door which were removed to facilitate the replacements was different to other windows and doors in the group of buildings. It follows that the replacement windows/door involve development and on that basis the appeal fails.
10. Furthermore, the appeal site forms part of a group of buildings of the same age and appearance which received planning permission in 1995 (Council Ref. N6/0250/95/FP). The Council attached conditions to that consent to ensure that the listed building which formed part of the wider setting was protected. These included a condition which effectively withdrew permitted development rights including those relating to the enlargement, improvement or other alteration of a dwellinghouse. Consequently, the works do not benefit from a general planning permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GDPO).
11. The appellant refers to the opening mechanism of the rear first floor windows as being modified to conform with means of escape in the event of a fire. There

is limited evidence to support this requirement and, in any case, this is not of relevance to the question of whether or not the works amount to development.

### **Conclusion**

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of replacement windows/door 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.

*Sarah Dyer*

Inspector