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## Appeal Decision

No site visit made

**by Iwan Lloyd BA BTP MRTPI**

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

**Decision date: 26 February 2021**

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**Appeal Ref: APP/U5360/X/20/3251716**

**66-68 Cadogan Terrace, Hackney, London E9 5EQ**

- 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 Southern Housing Group against the decision of the Council of the London Borough of Hackney.
  - The application Ref 2020/0583, dated 14 February 2020, was refused by notice dated 8 April 2020.
  - 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 replacement windows on a like-for-like basis as annotated on existing and proposed elevation drawings.
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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 proposed operation which is considered to be lawful.

### Procedural matter

2. The appellant has agreed that a site visit was not necessary in this case. The Council did not respond to the letter, and it was advised that if no response was forthcoming then the appeal would proceed to a determination. I am satisfied that I have sufficient information based on the written submissions, plans and particulars to proceed to a decision in this case.

### Scope of the LDC application

3. The appellant has provided existing layout/elevations and proposed layout/elevations and a proposed windows schedule to accompany the LDC application. These were presented at a scale 1:100, apart from the proposed windows schedule which was at 1:20 scale. The Council sought further information in relation to existing/proposed window sections at a suitable scale of 1:10 or 1:20. The appellant responded on 10 March 2020 enclosing an existing window schedule and the proposed window schedule both at a scale of 1:20. The appellant's communication indicates that there is no section for the windows but confirms that there will be no change to the window sections as the windows are replaced on a like-for-like basis.

4. The notes included on the proposed elevation plans indicate that 'all windows in red to be replaced with like-for-like timber fenestration as illustrated'.
5. The Council determined the application on the basis of this evidence, and I have done likewise.

### **Main Issue**

6. The main issue is whether the Council's refusal to grant a certificate was well founded.

### **Reasons**

7. The appeal property is a four-storey brick building currently used as flats situated on the east side of Cadogan Terrace and opposite Victoria Park. The appellant has obtained planning permission for the replacement of existing timber frame windows with UPVC frame windows and this is subject of a separate investigation.
8. The proposal relates to the replacement of other windows in the block identified and coloured red on the proposed plans. The existing windows to be replaced are timber framed with a central glazing bar. The opening top-light is hinged from the top and these have a horn detail where they join the central meeting rail. The windows exhibit a four-light sash of variable depth as depicted in the existing schedule (W1-W4). The central bay window at first-floor level and above as shown elevation view A is unaffected by the LDC application. View C elevation overlooks the A12 and depict a range of window types. Views B and D are side views of the building.
9. The main concern is whether the replacement of the windows constitutes 'development' within the meaning of the 1990 Act. Certain operations or activities are not to be taken as development for the purposes of the 1990 Act, as set out in Section 55(2). These include: "(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".
10. The Council has refused the LDC on the grounds that the information is insufficiently precise and unambiguous to show that the replacement windows would not constitute development.
11. In this instance the appellant has provided confirmation in the form of existing and proposed window schedules at a readable scale of 1:20 and has confirmed that the windows would be like-for-like timber replacements. Whilst sections are not provided, it is evident from the 1:20 scale plans of the existing and proposed windows detail that nothing would change in relation to material, frame size, glazing bar, transom, and method of opening. If no change is proposed as indicated in the submission and the replacement windows are on a like-for-like basis as shown on the submitted plans then there can be no material change that would affect the external appearance of the building.
12. I conclude that from the available evidence there is sufficient information which is precise and unambiguous to make a determination in this case. I conclude based on the available evidence on the balance of probability that the replacement of the windows in question constitutes the carrying out of maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building.

13. Accordingly, the works do not constitute development and do not require planning permission.
14. For the reasons given above I conclude, on the available evidence, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended. I have specified in the LDC the particular plans to which the proposed operations would be considered lawful.

*Iwan Lloyd*

INSPECTOR

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# 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

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**IT IS HEREBY CERTIFIED** that on 14 February 2020 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 reason:

The following operation shown on drawing numbers:

T1-3984 2 REV A: Existing layout and existing elevations views A & B,  
T1-3984 3 REV A: Existing elevations views C & D,  
T1-3984 REV C: Existing window schedule,  
T1-3984 5 REV A: Proposed layout and proposed elevations views A & B,  
T1-3984 6 REV A: Proposed elevations views C & D,  
T1-3984 7 REV A: Proposed windows schedule,

shall not be taken for the purposes of the Act to involve development of the land and would be lawful under Section 55(2)(a)(ii) that is because the proposed operation would be the carrying out for the maintenance, improvement or other alteration of any building or works which do not materially affect the external appearance of the building.

Signed

*Iwan Lloyd* - Inspector

Date 26 February 2021

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## **First Schedule**

Replacement windows on a like-for-like basis as annotated on existing and proposed elevation drawings

## **Second Schedule**

Land at 66-68 Cadogan Terrace, Hackney, London E9 5EQ

## 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: 26 February 2021

by Iwan Lloyd BA BTP MRTPI

Land at: 66-68 Cadogan Terrace, Hackney, London E9 5EQ

Reference: APP/U5360/X/20/3251716

Scale: Not to scale

