
Appeal Decision

Site visit made on 13 January 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Appeal Ref: APP/B2355/X/21/3283404

4 Bacup Road, Rawtenstall

- 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 Mr Iqbal Tailor against the decision of Rossendale Borough Council.
 - The application Ref 2021/0024, dated 14 January 2021, was refused by notice dated 17 September 2021.
 - 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 sash windows (PVC).
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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.

Main Issue

2. The main issue is whether the Council's decision to refuse the LDC was well-founded.

Reasons

3. An appeal relating to a LDC is confined to the relatively narrow remit of reviewing the local planning authority's (LPA's) decision and determining whether or not it was well-founded. The planning merits do not fall to be considered. In an appeal such as this the appellant 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 on the applicant and the LPA must be provided with sufficient information to satisfy them that the proposed development is lawful at the date of the application.
4. The appeal site comprises a visually prominent two storey building known as Wesley Villa, dated 1867. It is constructed of stone with a slate roof and white painted timber sliding sash windows and timber external doors. It is currently used as a children's nursery. The appeal site is situated in Rawtenstall Town Centre and within the Rawtenstall Conservation Area. I understand that the Character Appraisal for the conservation area identifies the building as being as a Modern Positive Building.

5. The building has an angled relationship to Bacup Road and its visually prominent main front elevation faces across a wide forecourt to the adjacent Longholme Methodist Chapel. The south east elevation is situated immediately adjacent to the pedestrian pavement and is open to close and direct public views. Views of the rear elevation and north west elevation are somewhat restricted by the presence of a single storey building which is currently occupied as funeral directors.
6. The LDC application proposed the replacement of the existing timber-framed sash windows with PVC-framed sash windows. The application was refused on the grounds that the replacement windows on three of the four elevations constitutes development as defined by s55 of the Act and the works do not fall within the provisions of works permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the GPDO). As such the LPA considers that the works would require planning permission.
7. The meaning of development is set out in s55(1) of the Act and includes the carrying out of building, engineering, mining or other operations in, on, over or under land. At s55 (1A) it is indicated that building operations, amongst other things, involve other operations normally carried out by a person carrying on business as a builder. In this case a builder would be likely to carry out the works and, therefore, as a matter of fact and degree I find that the installation of replacement windows is an operation as defined by s55(1) of the Act. Section 55(2) of the Act goes on to clarify at subsection (a)(ii) that the carrying out of works which do not materially affect the external appearance of the building shall not be taken to involve development of the land. Thus a judgement has to be made depending on the specific facts of the case.
8. The installation of replacement windows would affect the external appearance of the building. However, the courts have held¹ that it is the effect on the external appearance and not just the exterior which must be considered; and that the effect on the external appearance must be judged in relation to the building as a whole and not be reference to a part of the building to be taken in isolation. Matters that should be taken into account include the degree of visibility by an observer outside the building; the nature of the building and the nature of the alterations/works that are proposed to take place.
9. The principles established by *Burroughs* were raised in another case² where there was a successful challenge to a decision concerning an enforcement notice alleging the installation of UPVC windows on the ground floor front elevation of a property. The appeal was allowed on ground (c) on the grounds that the operations were not to be taken as development under s55(2) of the Act which required consideration as to what is the building and what is the effect on external appearance. The challenge was successful since the Inspector was obliged to focus on the visual impact that the window had on the building – and nothing else.
10. The building the subject of the current appeal is situated on a busy route through Rawtenstall in a prominent position close to the junction of Bacup Road and James Street. It is within the relatively busy town centre and close to a range of local amenities including shops, restaurants, the bus station and other

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

² *Haringey LBC v SSHLG & Muir* [2019] EWHC 3000 (Admin)

local services and facilities. The elevations that would be the subject of change are clearly visible within the public realm; particularly the south east elevation which is immediately adjacent to the pavement alongside Bacup Road and the main frontage elevation to the south west which faces onto a small amenity area and Bacup Road. Consequently, there is a high degree of visibility by an observer outside the building.

11. In addition, I have noted that the proposed works would involve replacing all of the existing single glazed timber framed windows on three elevations with double glazed PVC framed windows. There would be a total of 11 replacement windows on the main front south west elevation alone. Whilst I recognise that the number of windows in question is not the issue it is a factor which should be used to determine the nature of the building in question and the nature of the proposed alterations.
12. Although visibly prominent by an observer outside the building and the works relate to main elevations, the overall design, colour, shape and positioning of the frames would be the same as those currently in place, being white sliding sash windows to reflect the existing arrangements. The materials would be different, but if narrow section PVC frames replicate the existing windows, I do not see that the external appearance of the building would materially change. The proposed windows would be precisely engineered and would be specifically designed to match historic timber vertical sliding sash windows. The drawings and details submitted confirm that the profile of the existing frames would be replicated and therefore, in my judgement it would be difficult to distinguish the proposed from the existing frames.
13. Therefore, subject to the works being carried out in accordance with the submitted details, the external appearance of the building taken as a whole would not be materially changed. The installation of the replacement sash windows in PVC would not amount to development within the meaning of s55 of the Act for which planning permission would be required. As no development is proposed, I do not need to consider whether or not permission is granted by way of the GPDO. In coming to my decision I have taken account of the Council's comments including those on the type of property in question, its location and the provisions of the Act and the GPDO.

Conclusion

14. For the reasons given above I conclude that the Council's decision to refuse the LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under s195(2) of the 1990 Act as amended.

A A Phillips

INSPECTOR

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 14 January 2021 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The external appearance of the building taken as a whole would not be materially changed and therefore the proposed works would not amount to development within the meaning of s55 of the Act for which planning permission would be required.

Signed

A A Phillips
INSPECTOR

Date: 31 January 2022

Reference: APP/B2355/X/21/3283404

First Schedule

Replacement sash windows (PVC).

Second Schedule

Land at 4 Bacup Road, Rawtenstall

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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 31 January 2022

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

Land at: 4 Bacup Road, Rawtenstall

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Scale: Do not scale

