

Appeal Decision

Site visit made on 25 May 2022

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 23 June 2022

Appeal Ref: APP/P0240/X/21/3277397
19 Church Square, Toddington, Dunstable LU5 6AA

- The appeal is made by Nadeem Rathore under section 195 of the Town and Country Planning Act 1990 against a refusal by Central Bedfordshire Council to grant a lawful development certificate.
 - The application Ref: CB/21/00390/LDCE, dated 30 January 2021, was refused by notice dated 5 May 2021.
 - The application was made under section 191(1)(b).
 - The development for which the certificate is sought is replacement windows.
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Decision

1. The appeal is dismissed.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the replacement windows at the time of the application. The planning merits of the replacement windows are not relevant to the appeal and there is no planning application before me.
 3. 19 Church Square is a two-storey building used as a dental practice. The windows that have been replaced consist of all five at the front, which faces directly on to a main road, all three on the side visible from the main road that faces houses in Feoffee Yard, and three at the rear that adjoin houses in a part of St George's Close that is not open to public view.
 4. The Council refused the application for the following reason: -
"The building works carried out upon the application site comprising of the replacement of the traditional timber sash windows of the dental practice with new double glazed UPVC windows constitutes development within the meaning of Section 55 of The Town and Country Planning Act 1990 as amended and does not have planning permission nor have they acquired immunity from enforcement action so cannot be deemed to be lawful."
 5. Section 55 indicates that works to a building which "do not materially affect the external appearance of the building" are not development requiring planning permission. It is apparent from the Council's appeal representations that the
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Council have taken into account not only the effect of the replacement windows on the external appearance of the building, but also their impact on the building's appearance within the Toddington Conservation Area. In making my assessment, I have had regard only to their effect on the external appearance of the building (for the reason given by the High Court in *Haringey v SoS & Muir* [2019] EWHC 3000 (Admin) at paragraph 32).

6. The appellant states that the old windows had fallen into disrepair and maintains that their replacement with new windows in the same positions has not materially affected the external appearance of the building. He accepts that the new windows are visible from vantage points, but emphasises that they are the same size, design and colour as the old ones and that their fitting did not require alterations to the window openings.
7. I agree that no alterations have been made to the structural openings in the building, and that the overall dimensions of each of the new window frames are therefore the same as the old frames. I also agree that both the old and the new window frames have the same colouring, namely white with green cills. However, it is apparent from the information available to me that the new windows differ in other respects to the old ones.
8. The old windows were timber-framed sash windows with vertical sliders. The glass in each of the sliders was subdivided by timber glazing bars into separate same-sized panes, consisting of either two panes or three panes in each slider, determined by the overall size of the frame.
9. The new windows are uPVC-framed double-glazed windows. It should have been possible to replicate the external appearance of the old windows, notwithstanding the change from timber to uPVC and from single glazing to double glazing, but this has not been achieved. With the exception of two of the new windows at the back of the building, the uPVC framework is much bulkier than the timber framework used in the old windows, the new window frames have only three panes each, with a full-width pane at the top and two separate vertical panes below, the panes have no dividers, they do not slide and, where they are not fixed, they open outwards with the lower ones being side-hung and the upper one being top-hung.
10. I have taken into account the two other examples referred to by the appellant. The first concerns 2 St George's Close, which is one of the houses at the rear of the building. The Council's email to the householder about changing the timber-framed windows to uPVC-framed windows in this building accepts that the change would have planning permission in this instance by virtue of the permitted development order. The second concerns the appeal in Aylesbury Vale District (reference: APP/J0405/X/19/3237948), where the Inspector decided that the installation of a new window in the gable end of an end-terrace house did not materially affect the external appearance of the building because there were already two windows on this elevation; the circumstances were therefore very different.
11. For the above reasons, I have concluded, as a matter of fact and degree, that the new windows have materially affected the external appearance of the building. Planning permission is therefore required. I am satisfied that the

Council's refusal of the application is well-founded and the appeal has therefore been dismissed.

D.A.Hainsworth

INSPECTOR