



Appeal Decision

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2022

Appeal Ref: APP/E5900/X/22/3297285

39 Salmon Lane, London E14 7NA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr John Boran against the decision of London Borough of Tower Hamlets.
 - The application ref PA/22/00430, dated 3 March 2022, was refused by notice dated 29 March 2022.
 - 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 the replacement of the existing set of double doors at basement level in the front elevation of the house fronting salmon lane with a new set of double doors of the same design and similar in appearance.
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Decision

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

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the required information, including photographs, is included with the application and appeal documents, a decision can be reached on the papers¹.
3. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Council is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

¹ The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

Main Issue

5. This is whether the Council's decision to refuse to issue an LDC was well-founded. The decision turns on whether the proposal would constitute development pursuant to Section 55(2)(a)(ii) of the Town and Country Planning Act 1990 as amended (the Act).

Reasons

6. The appeal building is a locally listed three storey end of terrace dwelling with a basement which fronts directly onto the public highway. It is situated on the corner of Salmon Land and Aston Street and is in the York Square Conservation Area. The property is characterised by its painted ground floor and brickwork first floor and its multi-pane timber sash windows. The proposal is to replace a set of single-glazed, white-painted wooden double doors and frame with a set of double-glazed white uPVC doors and frame. The existing doors and their replacement are fully glazed with a small fan light above which is divided into 3 panes.
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 the replacement doors to be 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. Therefore, a judgement must be made depending on the specific facts of the case.
8. The courts have held² 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. In this case, although the proposed new doors and fanlight would be discernibly different on close inspection, save for the upper parts of the fanlight it would be barely visible to passers-by, being almost totally obscured by the pavement grating covering the lightwell. Looking at the building as a whole, I consider that the external appearance would not be materially affected by the minor differences at pavement level that would be evident from public vantage points.
10. Thus, the proposal to replace the double doors at basement level with uPVC doors of the same design and similar in appearance, would fall within the exception at s55(2)(a)(ii) and hence would not amount to "development" within the meaning of s55 of the Act. Since it would not be development, no planning permission would be required. As such, there is no need to consider whether or not permission would be granted by the GPDO.

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

Conclusion

11. For the reasons given above, I conclude on the evidence available that the council's refusal to grant an LDC in respect of the replacement of the existing double doors at basement level in the front elevation of the house fronting Salmon Lane with new double doors of the same design and similar in appearance 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.

S A Hanson

INSPECTOR



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 3 March 2022 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed replacement double door to the front elevation in the basement 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.

Signed

S A Hanson

INSPECTOR

Date: 11 August 2022

Reference: APP/J3720/X/21/3289277

First Schedule

Replacement of the existing set of double doors at basement level in the front elevation of the house fronting Salmon Lane with a new set of double doors of the same design and similar in appearance.

Second Schedule

Land at: 39 Salmon Lane, London E14 7NA

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: 11 August 2022

by **S A Hanson BA(Hons) BTP MRTPI**

Land at: 39 Salmon Lane, London E14 7NA

Reference: APP/E5900/X/22/3297285

Scale: Not to scale

