



Appeal Decision

Site visit made on 15 August 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 31 August 2022

Appeal Ref: APP/B1930/X/21/3289638

5 Lovett Road, London Colney, St. Albans, Hertfordshire AL2 1UE

- 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 Jane Grey against the decision of St Albans City & District Council.
 - The application Ref 5/21/12887, dated 14 October 2021, was refused by notice dated 15 December 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 remove existing timber framed double glazing and replace with new double glazing to match exact look and dimensions of existing windows/doors.
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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.

Preliminary Matter

2. I note that the dwellinghouse, No 5, is outside of the Napsbury Park Conservation Area (CA). I note that part of the rear garden is within the CA.

Main Issue

3. The main issue is whether the decision of the Council to refuse the application for a certificate was well founded.

Reasons

4. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Council's reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered. In any LDC application, an applicant 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 firmly on the applicant and the Council must be supplied with sufficient information to satisfy them that the proposed development is/was lawful at the date of the application.

5. Section 55 (2)(a)(ii) of the Act states that the carrying out for maintenance, improvement or other alteration of any building works which do not materially affect the external appearance of the building does not involve development. The term 'materially affect' has no statutory definition but is linked to the significance of the change which is made to a building's external appearance. However, for a material effect on external appearance to have occurred there should be a substantial or significant physical change.
6. Windows and doors are an important feature of a dwellinghouse. Changes to frame sizes, opening lights, profiles of the frames, glazing patterns, and single or double glazing could result in a substantial or significant physical change to the external appearance of a dwellinghouse.
7. The appellant states that the replacement frames would be in the '*exact dimensions and with exact look of the existing frames with no new openings or other alterations whatsoever*'. Within the appeal submissions it is stated that the replacement windows would be Alitherm 300 aluminium window frames in white¹.
8. The dwelling house is part of a modern development, and the existing windows and patio doors to the rear are white painted timber double glazed units. No plans of the proposed replacement windows or doors have been submitted. However, photographs of the existing dwelling showing the existing windows and doors, a plan of where the photographs were taken from and the statement of what is proposed are precise.
9. The use of white aluminium construction would not result in a substantial or significant physical change to the building where the replacement windows and doors would be the exact dimensions and exact look of the existing frames. There is no substantiated evidence to demonstrate that what is stated to be proposed would materially affect the external appearance of the building.
10. I therefore find that, on the evidence available, it is more likely than not, that the proposed replacement windows and doors would not result in a material alteration to the external appearance of the building. As such, the proposed replacement windows and doors would not amount to development and would be lawful.
11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of remove existing timber framed double glazing and replace with new double glazing to match exact look and dimensions of existing windows/doors 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.

Hilda Higenbottam

Inspector

¹ Information contained in letter dated 22 December 2021 submitted with the appeal.



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 14 October 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Section 55 (2)(a)(ii) of the Act states that the carrying out for maintenance, improvement or other alteration of any building works which do not materially affect the external appearance of the building does not involve development. The term 'materially affect' has no statutory definition but is linked to the significance of the change which is made to a building's external appearance. However, for a material effect on external appearance to have occurred there should be a substantial or significant physical change.

The proposed replacement windows and doors are described as matching the exact dimensions and with the exact look of the existing frames with no new openings or other alterations whatsoever. The window frames would be white Alitherm 300 aluminium.

On the evidence available, it is more likely than not, that the proposed replacement windows and doors would not result in a material alteration to the external appearance of the building. As such, the proposed replacement windows and doors would not amount to development and would be lawful.

Signed

Hilda Higenbottam

Inspector

Date 31 August 2022

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First Schedule

Remove existing timber framed double glazing and replace with new double glazing to match exact look and dimensions of existing windows/doors.

Second Schedule

Land at **5 Lovett Road, London Colney, St. Albans, Hertfordshire AL2 1UE**

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 use /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, 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.

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: 31 August 2022

by **Mrs Hilda Higenbottam BA(Hons) MRTPI**

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Scale: nts

