



Appeal Decision

Site visit made on 23 August 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2023

Appeal Ref: APP/G3110/X/22/3312523

47 Leckford Road, Oxford, OX2 6HY

- 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 Bihani Sarkar against the decision of Oxford City Council.
- The application ref 22/01535/CPU, dated 22 June 2022, was refused by notice dated 25 August 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 Sash windows replacement.

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 found to be lawful.

Main Issue

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

Reasons

3. The appellant seeks to replace the existing timber sliding sash windows at the property with new uPVC sliding sash windows. The only matter in dispute between the parties is whether or not the proposal accords with the conditions set out in paragraph A.3 of Class A, Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, which states, as far as is applicable to this appeal:

Development is permitted by Class A subject to the following conditions—

(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

4. Further guidance is given in the document "Permitted development rights for householders – Technical Guidance", September 2019, which states that:

"it may be appropriate to replace existing windows with new uPVC double-glazed windows or include them in an extension even if there are no such windows in the existing house. What is important is that they give a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of the frames."

5. The Council accept that the replacement of timber windows with uPVC can, in principle, be acceptable. But it is with the detail of this specific proposal with

which it raises concern. The Council's Delegated Report states that the horizontal glazing bars would increase in thickness from 30 millimetres (mm) to 47mm, while the vertical glazing bars would decrease in width from 30mm to 20mm.

6. First considering the vertical glazing bars, while the measurement of 30mm above is noted, at the time of my visit I was able to see that the existing vertical glazing bars are thin features within the windows, yet they appear thicker due to the paint that had been applied to them. There was an overlap of paint on the vertical bars, onto the surface of the window panes each side. This gave the impression of the bars themselves being wider than they are. Consequently, in my view, the thickness of the vertical bars within the new proposed uPVC windows would have a similar appearance to those that currently exist.
7. In terms of the horizontal glazing bars, while there was also some overlap of paint to these also, it was to a much lesser extent than with the vertical bars. As such, they appeared to generally be the stated 30mm. The increase in the thickness of these bars, an increase of just over 50%, will add 17mm to the overall dimension. The current proportions of the glazing bars would not change to such an extent so as to affect the overall appearance of the windows.
8. Consequently, in my view, given that the materials used in the vertical and horizontal bars would be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse, the proposal would comply with paragraph A.3 of Class A, Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, and thus is permitted development.

Other Matters

9. The Council refer to the possible method of opening being different from the existing windows, i.e., they may open outwards for cleaning. While this is noted, the details clearly indicate that the new windows would be sliding sash windows, as the existing are. As such, this matter does not dissuade me from my finding above.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of sash window replacement was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Martin Allen

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 22 June 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:

Paragraph A.3 of Class A, Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, states, as far as is applicable to this appeal:

Development is permitted by Class A subject to the following conditions—

(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

Given that the materials to be used in the external work would be of a similar appearance to those used in the construction of the existing dwellinghouse, the sash windows replacement would comply with paragraph A.3 of Class A, Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, and thus is permitted development.

Signed

Martin Allen

INSPECTOR

Date: 23 October 2023

Reference: APP/G3110/X/22/3312523

First Schedule

Sash windows replacement

Second Schedule

Land at 47 Leckford Road, Oxford, OX2 6HY

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: 23 October 2023

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Scale: Not to Scale

