



Appeal Decision

Site visit made on 4 December 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd December 2023

Appeal Ref: APP/X5990/X/23/3318501

11 Hinde Street, City of Westminster, London, W1U 3BD

- 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 development (LDC).
 - The appeal is made by Starclass (Hinde House) Limited against the decision of City of Westminster Council.
 - The application ref 19/04174/FULL, dated 5 August 2022, was refused by notice dated 29 September 2022.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful development is sought is 'Confirmation that the works undertaken have led to the lawful implementation of the planning permission (RN 19/04174/FULL) and listed building consent (RN 19/03868/LBC) dated 16 August 2019'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development confirming that works undertaken have led to the implementation of planning permission Ref. 19/04174/FULL and listed building consent Ref.19/03868/LBC prior to their expiry on 16 August 2022.

Background

2. Planning permission was granted for the 'Installation of openings to the existing shopfronts' (ref.19/04174/FULL) on 16 August 2019. An associated listed building consent (ref. 19/03868/LBC) was granted on the same date for the 'Installation of openings to the existing shopfronts, alterations to the entrance floor level and enlargement of internal openings.'
3. The development approved was the formation of a doorway central in each of the shopfront display windows at 11 and 12 Hinde Street. Additionally, internal works were consented as described in the listed building consent (LBC). Together, these were designed to improve building accessibility.
4. The planning permission (PP) and LBC were both subject of a number of conditions. This included a 3-year time limit for the commencement of the development and specification of the relevant plans showing the extent of the approved works. Such conditions are standard and there is no contention between the main parties that they meet the legal tests and the requirements set out in Paragraph 56 of the National Planning Policy Framework in relation to conditions.
5. On 15 June 2022 works were undertaken to remove part of each of the masonry stallrisers at 11 and 12 Hinde Street. This was carried out to inform

structural requirements associated with the PP and LBC. The demolished sections were then made good.

Main Issue

6. The main issue is whether or not the Council's decision to refuse the LDC was well founded.

Reasons

7. Section 56(2) of the TCPA 1990 provides that 'development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out'. Section 56(4) provides the meaning of 'material operations'.
8. Of those operations, the appellant refers to sub-paragraph (aa) relating to 'any work of demolition of a building'. However, given the extent of removal of masonry from the shop frontages, those works properly sit within s56(4)(a) which provides for any work of construction in the erection of a building. Section 336(1) states that "'erection," in relation to buildings as defined in this subsection, includes extension, *alteration* [my emphasis] and re-erection'. Whether those works of alteration of the existing building were material is a matter of fact and degree.
9. A grant of planning permission must be considered in the round and interpreted within its 4 corners. The PP identifies the relevant plans showing the works necessary to achieve the improved accessibility to the shop unit by way of level access with the external pavement. To provide the new doorway and allow for the door to open inwards, it would be necessary to lower the internal floor as detailed on the approved plans and the LBC description. Additionally, the lateral depth of the stallriser wall would need to be reduced to allow for the open door as shown on the approved plan PP201 Rev2.
10. Although the investigatory works were primarily concerned with informing the detailed implementation of the PP and LBC at another time, they have extended to coincide with works necessary to implement the approved scheme. The removal of a section of the rear part of the stallriser forms part of the required works to achieve what the PP and LBC set out to accomplish. Whilst limited in their extent, in the context of the modest schedule of works approved overall, I find they are beyond *de minimis* as described by the Council as a matter of fact and degree. The making good of the external part of the stallriser does not affect that position.

Conclusion

11. For the reasons above, I conclude that a material operation comprised in the development has taken place. The evidence before me indicates that this was carried out prior to 16 August 2022 and therefore before the expiry of the 3-year period specified in the PP and LBC. The development therefore shall be taken to have begun. Accordingly, I find the Council's refusal to grant a certificate of lawfulness in respect of 'Confirmation that the works undertaken have led to the lawful implementation of the planning permission (RN 19/04174/FULL) and listed building consent (RN 19/03868/LBC) dated 16 August 2019' 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.

R Hitchcock

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 5 August 2022 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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), and sufficient to have begun the implementation of the planning permission 19/04174/FULL and listed building consent 19/03868/LBC, both dated 16 August 2019.

This is because a material operation comprised in the development has taken place prior to the expiry of the 3-year period for the implementation of that planning permission and listed building consent.

Signed

R Hitchcock

Inspector

Date: 22nd December 2023

Reference: APP/X5990/X/23/3318501

First Schedule

Investigatory works, which included the removal of brickwork required in the lowering of the shop floor level and alteration of the stallriser in conjunction with a new doorway within the site's frontage.

Second Schedule

Land at 11 Hinde Street, London, W1U 3BD

IMPORTANT NOTES – SEE OVER

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated:
22nd December 2023

by R Hitchcock BSc DipCD MRTPI

Land at: 11 Hinde Street, London, W1U 3BD

Reference: APP/X5990/X/23/3318501

Scale: Not to Scale

