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# Appeal Decision

Site visit made on 26 March 2024

**by L Douglas BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03<sup>rd</sup> April 2024**

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**Appeal Ref: APP/K5600/X/23/3331009**

**49 Campden Hill Road, London W8 7DY**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Massimo Bertoli against the decision of the Council of the Royal Borough of Kensington and Chelsea.
  - The application ref CL/23/04609, dated 14 July 2023, was refused by notice dated 8 September 2023.
  - The application was made under section 192(1)(b) of the Act.
  - The development for which a certificate of lawful use or development is sought is:  
Creation of rustication channels to the front elevation of the dwellinghouse.
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## Decision

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

## Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

## Reasons

3. It is not disputed that the works which are claimed to be lawful would comprise development requiring planning permission. It is claimed that they would constitute 'permitted development' under the provisions of Article 3(1) and Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
4. Class A, Part 1 of Schedule 2 of the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse subject to limitations. The proposed creation of rustication channels to the front elevation of the appeal dwelling would fall within this description. There is no dispute that the proposed development would comply with the limitations set out at paragraphs A.1(a) to (l) and A.2(a) to (d) of Class A, and I see no reason to reach any alternative conclusion.
5. Condition A.3(a) of Class A requires the materials used in any exterior work to be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Conditions A.3(b) and (c) and A.4(1) to (16) are not applicable in this case.
6. Rustication channels would be created within the existing render/stucco finish of the dwelling, which would then be painted to match the finish of the existing

building. No materials, other than matching paint, would therefore be used in the exterior works proposed. If there was any doubt, it has been clarified that the creation of the rustication channels would only comprise the cutting of V-shaped groove bands into the existing render/stucco<sup>1</sup>.

7. I have been referred to an appeal decision<sup>2</sup> concerning the construction of an external brickwork and timber fireplace within a painted stucco wall at a different site. In that case, it was found that the fireplace did not accord with Condition A.3(a) of Class A, even if it was to be painted to match the finish of the existing building. The same circumstances do not apply to this case, where the proposed development would not involve the use of any materials other than a painted finish to match the existing building.
8. The proposed development would not require the use of any materials which are not of similar appearance to those used in the construction of the exterior of the existing dwellinghouse, in accordance with condition A.3(a). It would therefore be permitted by Article 3(1) and Class A of Part 1 of Schedule 2 of the GPDO.

### **Conclusion**

9. 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 the creation of rustication channels to the front elevation of the dwellinghouse was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

*L Douglas*

INSPECTOR

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<sup>1</sup> The appellant's Appendix 3: Method Statement dated 26 September 2023

<sup>2</sup> Appeal Ref: APP/K5600/X/22/3293978

# 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

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**IT IS HEREBY CERTIFIED** that on 14 July 2023 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:

The creation of rustication channels to the front elevation of the dwellinghouse would constitute development within the meaning of section 55 of the Town and Country Planning Act 1990 (as amended) for which planning permission is required. Planning permission is granted for that development, as shown on the proposed front elevation plan (labelled: Project Number 4830, Drawing Number A4-110, Revision P2, dated 06.07.2023) and the Method statement (by Studio Indigo, Revision A, dated 26/09/2023) by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) since it would fall within Class A, Part 1 of Schedule 2, and is permitted development.

Signed

*L Douglas*

Inspector

Date: 03<sup>rd</sup> April 2024

Reference: APP/K5600/X/23/3331009

## **First Schedule**

Creation of rustication channels to the front elevation of the dwellinghouse.

## **Second Schedule**

Land at 49 Campden Hill Road, London W8 7DY

IMPORTANT NOTES – SEE OVER

## 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: 03<sup>rd</sup> April 2024

**by L Douglas BSc (Hons) MSc MRTPI**

**Land at: 49 Campden Hill Road, London W8 7DY**

**Reference: APP/K5600/X/23/3331009**

Scale: Not to Scale

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