



Appeal Decision

Site visit made on 31 October 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 OCTOBER 2024

Appeal Ref: APP/N4720/X/24/3339938

Ruse House, 29 Cumberland Road, Headingley, Leeds, LS6 2EF

- 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 M Hamling and K Lyon-Taylor against the decision of Leeds City Council.
 - The application ref 23/07504/CLP, dated 14 December 2023, was refused by notice dated 8 February 2024.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is the installation of replacement windows.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The proposed plan No 02 Revision D refers to the west elevation proposed windows as '*treated hardwood and painted*'. The appellant has confirmed that this is an error and that it is proposed to install wood grain effect uPVC windows in a white colour. The Council has not determined the LDC application based on any of the windows being replaced with treated hardwood. I shall equally not consider the appeal on this basis. It is, however, not clear from the evidence whether all the windows would be replaced within the existing property or just some of them. I return to this issue later in this decision.

Main Issue

3. A Lawful Development Certificate (LDC) is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed replacement windows are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.
4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether it has been demonstrated that the proposed replacement windows would not require planning permission.

Reasons

5. There is dispute between the main parties in terms of whether the lawful use of the appeal property is a use class C3 dwellinghouse or a sui-generis student

house in multiple occupation. The appeal property falls within the Headingley Hill, Hyde Park and Woodhouse Moor Conservation Area.

6. The Council has submitted sale particulars of the appeal property, and it is understood that it was last owned by the University of Leeds. The sale particulars refer to the property as an '8-bedroom detached house', but the property description and features state, *'Let for many years as a student HMO' and 'The property has been used as a student HMO for many years, and we expect that it could continue as an 8-or 9-bedroom HMO. The sellers are exempt from requiring planning permission to let the property to students.'*
7. The appellants assert that the lawful use of the property is a C3 dwellinghouse and base this view on an email from the Planning Services Team, dated 20 July 2022, which states, *'I can confirm our systems show the last registered use for this property is as a dwellinghouse and therefore has C3 use. This means you would not need to apply for change of use to use this property as a family home.'*
8. While the Council's 'systems' may show the last registered use of the property as a dwellinghouse, it remains possible that the property might have become a lawful sui-generis student HMO owing to the passage of time. There is no LDC before me which provides legal clarification and certainty about the lawful use of the appeal property and, moreover, the above evidence casts sufficient doubt, on the balance of probability, about the appellants' claim that the property has a lawful C3 dwellinghouse use.
9. Given the above, I have considered the proposed development based on the property being either a lawful sui-generis HMO, or a use class C3 dwellinghouse. As per my reasoning below, this is not in any event a determinative matter in respect of this appeal.
10. If the property is lawfully a C3 dwellinghouse, it is necessary that I consider the proposed replacement windows against Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The replacement of windows would constitute an alteration of the alleged dwellinghouse. The matter in dispute between the main parties is whether the proposed replacement windows would fall foul of condition A3(a) of Class A which is *'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'*.
11. In this context, it is noteworthy that the Government's Permitted Development Rights for Householders: Technical Guidance (updated 2019) states *'The condition above is intended to ensure that any works to enlarge, alter or improve a house result in an appearance that minimises visual impact and is sympathetic to existing development. This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials'* and *'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'*.

12. In this case, I do not have sufficient information from the appellants to reach a conclusion in terms of whether the proposed uPVC replacement windows would have a similar appearance to the existing wooden windows. Firstly, it is not clear from the evidence whether the appellant is proposing to replace all windows or just some of them. The LDC application lacks precision in this regard and, furthermore, the appellants do not provide clarity in respect of this matter as part of any final comments.
13. Secondly, the existing and proposed plans are submitted at a scale where it is not possible to determine with certainty whether the proposed replacement window frames would have the same profile and dimensions as those that exist now. As the proposal is for replacement windows, I would have expected drawings at a detailed scale showing the specific profile of the existing and proposed replacement windows.
14. I note the appellants' brochure showing '*Legacy PVCu sliding sash windows*'. Despite this, and, in order to compare the profile of the existing windows with the proposed windows, I find that the appellants should have submitted detailed and scaled drawings (including the full profile of the windows) as part of the LDC application. This should also have included a manufacturers sample of the actual white coloured uPVC material and/or an actual physical example(s) of the type of replacement window(s) to suitably compare against those windows that exist. This level of detail would establish whether the finish, colour, thickness, and design of the proposed window frames would give an overall similar visual appearance.
15. The appellants have commented that the replacement windows would be '*identical*' to those that have been installed at 57 Headingley Lane, Headingley. While I did visit this property as part of my site visit and viewed it from public land, I nevertheless did not have authorisation to go onto the land and so could not examine the finish or appearance of the windows close-up. Moreover, on the evidence that is before me, I am not certain which windows have been replaced at this property. Importantly, these windows are not juxtaposed with the existing windows at the appeal property and so I cannot make a reasonable comparison. In any event, it is necessary that an LDC application includes relevant and detailed specification on the file. It is not appropriate to suggest that proposed windows would be the same as windows that exists elsewhere: that does not provide the necessary detail and precision for the purposes of issuing a site specific LDC.
16. I find that I have insufficient information before me to conclude that the replacement windows would be permitted development under Class A of Part 1 of Schedule 2 of the GPDO.
17. If I were to take the view that the appeal property was not a use class C3 dwellinghouse, and instead was a sui-generis HMO, then section 55(2)(a) states that '*the carrying out for the maintenance, improvement or other alteration of any building of works which—(ii)do not materially affect the external appearance of the building*' shall not be taken for the purposes of the Act to involve development of the land. For the reasons outlined above, I cannot conclude whether any of the proposed window replacements would materially affect the external appearance of the building. Moreover, I do not know which windows are proposed to be replaced. Therefore, I cannot

conclude that the proposal, if it relates to a sui-generis HMO, would not amount to development requiring planning permission.

Conclusion

18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development in respect of the installation of replacement windows was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D Hartley

INSPECTOR