



Appeal Decision

Site visit made on 7 January 2025

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2025

Appeal Ref: APP/B0230/X/24/3346979

105 Littlefield Road, Luton LU2 9BU

- 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 Mr Mohammed Hussain against the decision of Luton Borough Council.
 - The application ref 24/00097/LAWE, dated 23 January 2024, was refused by notice dated 28 March 2024.
 - 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 use or development is sought is a single storey rear extension.
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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 existing operation which is found to be lawful.

Main Issue

2. Section 191(4) of The Town and Country Planning Act 1990 (as amended) (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue in this case is whether the Council's decision to refuse to grant a LDC is well founded.
3. The plans submitted with the LDC application indicate that to the rear of the appeal property there is a single storey lean-to element that spans across most of the width of the site, attached to the main two storey rear elevation of the property. To the side of this the plans show a small flat roofed element that spans the boundary of the site with No 107. Attached to the side elevation of this and the rear elevation of the lean-to element, the plans show a single storey flat roof addition that also spans almost the width of the site. This is hatched in red on the 'block plan' (drawing number 04/04) and the side and rear walls of this addition are also hatched in red on the 'existing plan' (drawing number 01/04). It is, therefore, clear that this is the single storey rear extension that is the subject of the LDC application. My observations of the development on site were consistent with these plans.

4. It is agreed that the relevant time limit¹ in this case is 4 years. Accordingly, the main consideration is whether or not a period of 4 years has passed beginning with the date on which the single storey rear extension was substantially completed.
5. The test of the evidence is on the balance of probability and the onus of proof is on the appellant.

Reasons

6. Submitted with the appeal are six statutory declarations. The first is from the appellant, who says they are the proprietor of the appeal site. They say that the works to construct the single storey extension commenced on 15 February 2018 and that the works were completed on 21 October 2018. They suggest that some additional works were undertaken to the extension in February 2019, but the suggestion is that the extension was substantially completed in October 2018. They say that at this time the extension could be used, which indicates that the development had been substantially completed.
7. The daughter of the appellant has also provided a statutory declaration. She says that she lives at the appeal site with her father and her family. There are also statutory declarations from three nearby neighbours, who live at Nos 107 (adjoining the appeal site), 109, and 111 Littlefield Road. All say that they can see the back garden of the appeal site from their property. A fourth neighbour has also provided a statutory declaration, although I note that their address given in the declaration is for a property in a nearby street and not within close proximity to the appeal site. Nevertheless, they say that they are familiar with the appeal property.
8. All of the above declarations corroborate the claims of the appellant with regard to the commencement of the works to construct the extension and their completion in October 2018.
9. Whilst there is a degree of uniformity in the wording used in the statutory declarations, I have been given no reason to doubt their contents. I am also mindful of the weight that is carried by evidence provided in such statutory declarations, in view of the sanctions that could be imposed should these contain false or misleading evidence.
10. The appellant has provided a number of aerial photographs of the appeal site, dating from 2018, 2020, 2021 and 2024. Although there is variation in the clarity of these images, I cannot say that these contradict the appellant's claims. The images dated 2020 and 2021 are the most clear and show some form of addition to the rear of the property, in the location of the extension. Indeed, on what is likely to be the roof of the extension visible in the photographs I can see what appears to be the roof light in the extension roof consistent with what I observed on site. Although the image from 2018 (when works to construct the extension are said to have commenced) is not entirely clear to sufficiently show what the appellant suggests are the footings of the extension, the two subsequent aerial images are of assistance in corroborating the appellant's claims in this case. The last image is of limited assistance as the location of the extension appears to have been obscured by vegetation.

¹ Having regard to section 171B(2) of the 1990 Act and section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

11. Whilst I have no reason to doubt what the appellant says regarding the works undertaken to the extension in February 2019, it is difficult to appreciate the context and the location of the image provided in the appellant's statutory declaration, which they say shows the works being undertaken. Furthermore, the date of the photograph is around 2 months earlier than the date of the invoice provided by the appellant, which they say was for the materials for the works. There is, therefore, a degree of ambiguity in this element of the appellant's evidence.
12. None of the evidence I have referred to above was before the Council when it determined the LDC application. Accordingly, I cannot find fault in their determination of the application. Nevertheless, I can take into account this evidence in my determination of the appeal. The Council has not sought to contradict any of the evidence submitted with the appeal. There is, therefore, nothing before me to make the appellant's version of events less than probable.
13. All things considered, despite the ambiguity in the appellant's evidence regarding works to the extension in February 2019, I find the evidence regarding the commencement and completion of the extension to be persuasive. Accordingly, I find it more likely than not that a period of 4 years has passed beginning with the date on which the single storey rear extension was substantially completed.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a single storey rear extension is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act.

J Moss

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 23 January 2024 the development 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, labelled 'location plan', was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It is more likely than not that a period of 4 years has passed beginning with the date on which the single storey rear extension (the location of which is indicated with red hatching on the plan attached to this certificate and labelled 'block plan') was substantially completed.

Signed

J Moss

Inspector

Date: 3 February 2025

Reference: APP/B0230/X/24/3346979

First Schedule

The single storey rear extension, the location of which is indicated with red hatching on the plan attached to this certificate and labelled 'block plan'.

Second Schedule

Land at 105 Littlefield Road, Luton LU2 9BU

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 development described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the development described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any development 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.



Plans

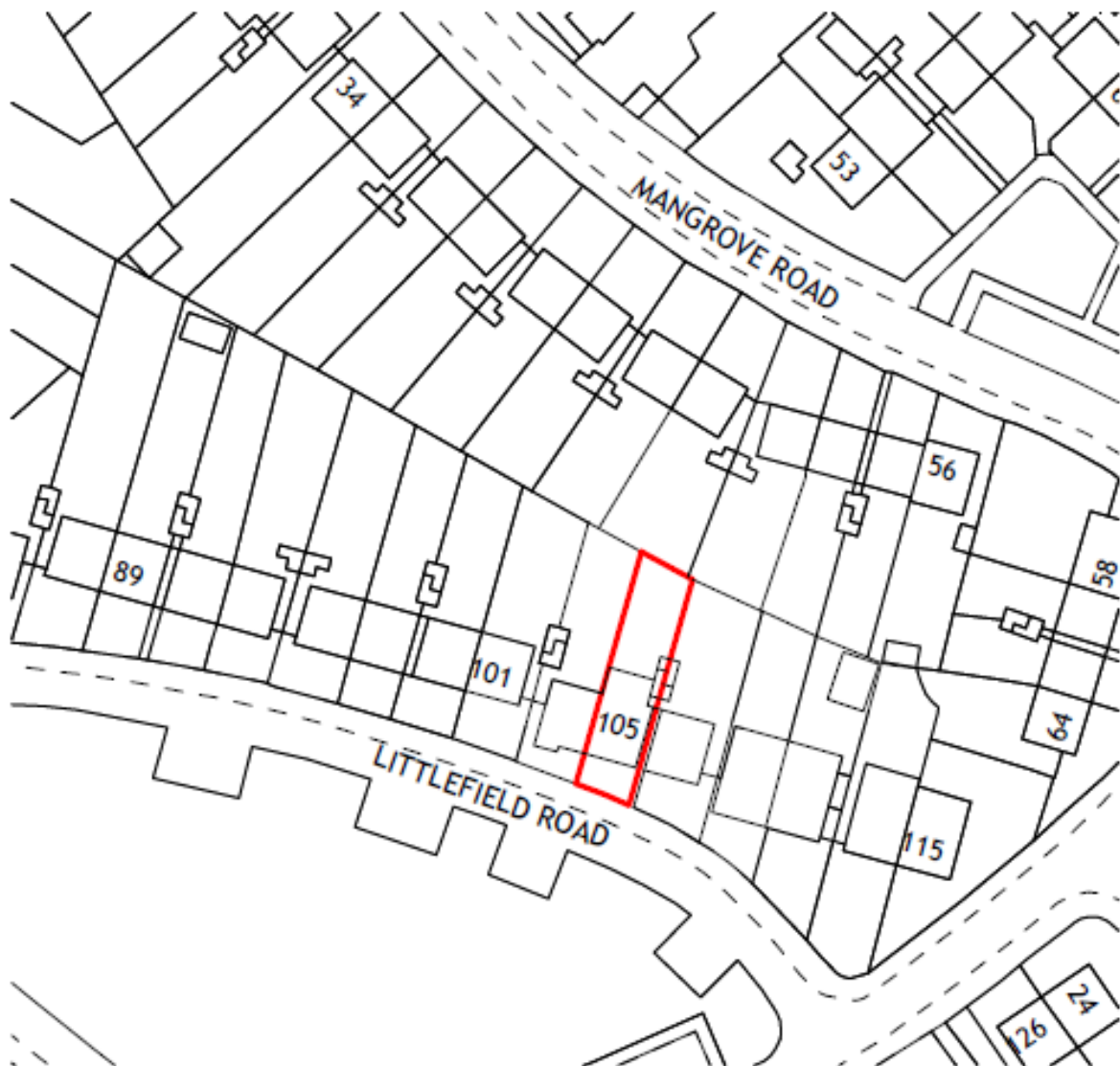
This is the plan referred to in the Lawful Development Certificate dated: 3 February 2025

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Scale: Not to scale



location plan



block plan