



Appeal Decision

Site visit made on 20 February 2025

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 18th March 2025

Appeal Ref: APP/A4710/X/24/3344259

3 Providence Hill, Beestonley Lane, Stainland HX4 9PL

- The appeal is made by Andy Cigan under section 195 of the Town and Country Planning Act 1990 against a refusal by Calderdale Metropolitan Borough Council to grant a lawful development certificate.
- The application Ref: 24/00216/191, dated 8 March 2024, was refused by notice dated 23 April 2024.
- The application was made under section 191(1)(b).
- The development for which the certificate is sought is described in the application as "The addition of door sets and one window to the rear elevation" and more specifically in the Council's appeal statement as "the addition of full height triple door sets at 1st and 2nd floor to the rear elevation" (referred to in this decision as ground floor and first floor to match the appellant's description).

Decision

1. The appeal is dismissed.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the operations at the time of the application. The planning merits of the operations are not relevant to the appeal and there is no planning application before me.
3. The Council refused the application for the following reason: -

"1. The evidence submitted does not show that on the balance of probability the proposed works within the red line is Permitted Development and therefore a Lawful Development Certificate cannot be issued under Section 191(1) of The Town and Country Planning Act 1990 (as amended) in this instance."
4. The Council have explained the decision in more detail in their appeal statement. It is based on the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class A, Condition A.3, which stipulates that when a dwellinghouse is enlarged, improved or otherwise altered, the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

5. Condition A.3 requires a comparison to be made between the materials used in the development and those used in the “existing” house. “Existing” is defined by Article 2(1) of the Order to mean existing immediately before the carrying out of the development. The Government publication *Permitted development rights for householders: technical guidance* advises:

“The existing house will include previous development to the house, whether undertaken as permitted development or as development resulting from a planning permission from the local authority.”
6. The appellant’s plan A3.001 shows the changes that have been made since 2020. The development shown as existing in 2020 is the same as the development shown on the photographs taken by the Council in March 2021 that accompany their appeal statement.
7. Planning permission was granted on 9 September 2021 (Ref 21/00831/HSE) for “Balconies to rear elevation and external alterations to windows and doors”, subject to Condition 1 that the development shall be carried out in accordance with the approved plans listed in the decision notice. The lower-ground floor glazed doors shown on plan A3.001 as existing in September 2021 were installed generally as approved and the Council’s description of the certificate applied for takes no exception to them. The existing dwellinghouse for the purpose of the comparison required by Condition A.3 would therefore be the one shown on plan A3.001 as existing in September 2021. However, for the reasons explained below the comparison does not fall to be made in the circumstances that arise in this appeal.
8. By September 2022, a change had been made at ground-floor level that deviated from the approved plan A3.8. By September 2023, changes had also been made at first-floor level that were not as approved in plan A3.8. All these changes were a breach of Condition 1 and they materially affected the external appearance of the house by replacing a substantial amount of stonework that would have been retained, by expanses of glazing that were not approved.
9. Article 3(4) of the Order states that nothing in the Order permits development contrary to any condition imposed by any planning permission. Article 3(5) indicates that the permission granted by Schedule 2, Part 1, Class A does not apply if the building operations involved in the construction of the building are unlawful; “building” is defined by Article 2(1) to include any part of a building.
10. The certificate applied for under section 191 cannot be granted because the operations were not lawful at the time of the application and the time allowed for taking enforcement action against them has not expired. I am therefore satisfied that the Council’s refusal of the application is well-founded and the appeal has been dismissed.

D.A.Hainsworth

INSPECTOR