
Appeal Decision

Site visit made on 30 December 2025

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2026

Appeal Ref: APP/Z2505/X/25/3364360

Flats 2 & 4, 57 Tawney Street, Boston, PE21 6PD

- 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 Paul Brown against the decision of Boston Borough Council.
 - The application Ref: B/24/0531, dated 30 December 2024, was refused by notice dated 13 March 2025.
 - The application was made under section 191(1)(b) of the Act.
 - The development for which a certificate of lawful use or development is sought is: Replace current wooden windows to the front elevation with UPVC windows to match existing style and colour
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether the Council’s decision to refuse a LDC was well founded.

Reasons

3. The provisions of s191(2) of the Act include (a) that a use is lawful at any time if no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. The relevant date for determining lawfulness is the date of the LDC application, hence 30 December 2024. No argument is made that the time for enforcement action had expired at the date of the application. The appellant’s case is that the replacement windows installed are not materially different from the originals and that planning permission is not required.
5. No 57 Tawney Street is a 2 storey red brick dwellinghouse which was in use as flats at the date of the LDC application to the Council.
6. Building operations, including the replacement of windows in a building, fall within the definition of “development” within s55(1) of the Act. However, by virtue of s55(2)(a) the “maintenance, improvement or other alteration of any building” does not constitute s55(1) development if those works do not “materially affect the external appearance of the building”.

7. Hence, in a case where no “development” has taken place planning permission is not required from the local planning authority. Similarly, the provisions of the GPDO¹ (including Article 4 Directions removing permitted development rights) would be of no relevance since the GPDO is only applicable to “development” that requires planning permission.
8. In this case No. 57 is located in the Boston Conservation Area (BCA). Along with others in the street it sits fairly close to the back edge of the pavement and fronts onto the Central Park. As such it is prominently visible from public vantage points.
9. Prior to the replacement windows being installed the front elevation comprised 2 timber sash windows at first floor, with timber sash windows within a rectangular timber mullioned bay at ground floor. The building’s early C20th Edwardian character and appearance is in large part identifiable from its attractive architectural features and flourishes, including the traditional design and materials of its windows.
10. The original windows were all replaced with white uPVC double glazed sash windows. They are significantly different in appearance from the originals due to the combination of the shiny and smooth ‘machined’ uPVC frame surface, trickle vents incorporated into the top frames, double-glazing separated by internal beading, and the readily apparent ‘double register’ effect from the glass when viewing the windows in passing.
11. Overall, the replacement windows as installed significantly and materially affect the external appearance of the building. Consequently, they are not excluded from the definition of “development” as set out earlier and require planning permission.
12. Such works would ordinarily fall to benefit from the planning permission (“permitted development”) granted by Article 3(1) and Class A, Part 1, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, that is not the case here for two reasons.
13. Firstly, Class A permitted development rights do not apply to flats. Secondly, even if it did apply, those permitted development rights were disapplied in 1988 by the Council’s Article 4 Direction.
14. Consequently, notwithstanding timber mullions were subsequently re-introduced into the bay window and trickle vents removed, the double glazed uPVC windows installed at the date of the LDC application do not benefit from any planning permission and are not lawful.

Conclusion

15. For all the reasons given above I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of the installation of uPVC 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 Act.

Thomas Shields

INSPECTOR

¹ Town and Country Planning (General Permitted Development) (England) Order 2015