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Planning Development

Evidence Statement – Certificate of Existing Lawful Development

Replacement windows and doors at Montreal, 37 South Lane, Holmfirth

Introduction & background

An application for a Certificate of Existing Lawful Development is submitted to the Council under Section 191 of the Town and Country Planning Act 1990 (as amended). The date of the application is 22nd October 2024, and the applicant is Mrs Philippa Burgess.

A Certificate of Existing Lawful Development for the replacement windows and doors was previously submitted in July 2024, however this was refused in September 2024 on the grounds that,

'The existing replacement windows and doors did not benefit from a general planning permission granted under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) due to the colour of the replaced frames not being of a similar appearance to the replaced windows contrary to condition A.3(a) of Class A' (LPA ref: 2024/91997).

The officer's report went on to state,

'The applicant also confirms within the application form that the replacement windows were installed in October 2020. Consequently, and by virtue of Section 171B of the Town and Country Planning Act 1990 (as amended), the windows/doors are not immune from enforcement action until 2030.'

Having sought advice, the applicant is now re-submitting a new Certificate of Existing Lawful Development on the basis that the immunity period is actually four years (not ten) and therefore the replacement windows and doors were installed more than four years ago ¹. The development is therefore immune from enforcement action in accordance with relevant legislation.

Relevant legislation changes and transitional arrangements

It is important to note that in this case **the immunity period remains 4 years under the transitional arrangements**, not 10 years as the LPA have previously asserted. Counsel's advice was recently obtained on a similar matter, confirming the following legal position.

¹ At the date of this application

On 2nd April this year, the Planning Act 2008 (Commencement No. 8) and Levelling-Up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 were made, bringing Section 115 of the Levelling-Up and Regeneration Act 2023 into force on 25th April 2024.

This changed the period for all breaches of planning control to 10 years in England.

However, Regulation 5 of the 2024 Regulations includes transitional provisions which provide that, where operations under Section 171B (1) Town and Country Planning Act were substantially completed before 25th April 2024, the 4 year period will continue to apply.

The transitional arrangements are also reflected in the relevant Planning Practice Guidance (Paragraph 004 Reference ID: 17b-004-20180222), stating:

“In most cases, development becomes immune from enforcement if no action is taken:

..... within 4 years of substantial completion for a breach of planning control consisting of operational development **where substantial completion took place before 25 April 2024....”**²

In this case, substantial completion occurred before 16th October 2020 and therefore as the evidence below will demonstrate, the development is immune from enforcement action.

What the application seeks to establish as lawful development

As explained above, the application is made under the four-year immunity rule as the development in question relates to the following aspect of ‘development’ as defined under Section 55 of the Town and Country Planning Act:³

- a) Building operations comprising the replacement of 16 windows and 3 doors over four years prior to the date of this application.

In detail, these windows and doors are split on the following sides of the property (as per the photos at Appendices C, D & E:

- 1) 9 windows on the front (south elevation)
- 2) 6 windows and 2 doors (the pair of French doors) on the western elevation
- 3) 1 window and 1 door on the eastern elevation (the window is actually north facing).

Lawful Development Certificate legislation

The legislation sets out (Section 191 – 1):

“If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;

² Our emphasis.

³ Meaning of ‘development’ and ‘new development’



South Elevation – 37 South Lane

(b) any operations which have been carried out in, on, over or under land are lawful ⁴; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.”

Section 191 (2) goes on to state:

“For the purposes of this Act uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Section 171B (1) (as amended this year) confirms the *new* time limits for enforcement action in respect of building operations:

“Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under

⁴ Our emphasis

land, no enforcement action may be taken after the end of the period of – (a) in the case of planning control in England, ten years beginning with the date on which the operations were substantially completed.”

However, as discussed in the previous section, where operations under Section 171B(1) Town and Country Planning Act were substantially completed before the 25th April 2024, **the 4 year period will continue to apply.**

Statutory requirements of the Town and Country Planning (Development Management Procedure) Order 2010

As required by this secondary legislation, Part 8 (39) states that such an application must be accompanied by the following information (responses shown in blue):

- (a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North; (submitted with this application - see accompanying location plan)
- (b) such evidence verifying the information included in the application as the applicant can provide; (this Evidence Statement and Sworn Statements at Appendices A and B); and
- (c) a statement setting out the applicant’s interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application. The applicant Mrs Phillipa Burgess is the freehold owner of the property in question.

Guidance and case law for Lawful Development Certificate applications

The National Planning Practice Guidance ‘Lawful Development Certificates’, paragraph 006, states:

“In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.”

Case law notes that the ‘balance of probability’ test is less onerous than that of ‘beyond reasonable doubt’. Moreover, the courts ⁵ have held that the applicant’s own evidence does not need to be corroborated by independent evidence in order to be accepted.

Evidence of lawfulness

1) Sworn Statements of declaration from two witnesses

The first sworn statement is provided by the applicant Mrs Philippa Burgess, and is enclosed with the application at Appendix A. In summary, the applicant employed Crest Home Improvements of Barnsley to replace the windows and three of the doors in September 2020 as the previous windows and doors, which were constructed from brown uPVC, were considered faulty. The replacement windows are cream sash style uPVC, and the replacement doors comprise of one pair of French doors and one single door, also in cream uPVC. The replacements were completed in October 2020 with Crest Home

⁵ *Gabbitas v Secretary of State for the Environment and Newham LBC* [1985] J.P.L. 630

Improvements issuing the Fensa certificate (see below) on 16th October 2020. These windows and doors have remained in place ever since.

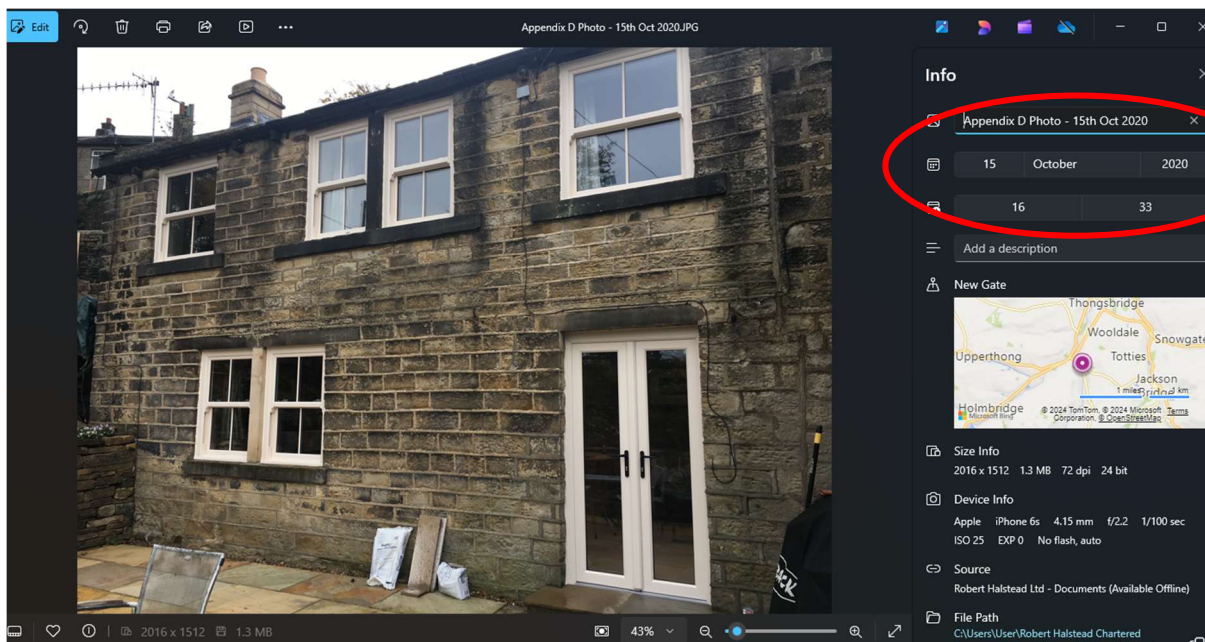
The second sworn statement is provided by **Redacted**, neighbour at **Reda** South Lane, and is enclosed with this application at Appendix B. In summary, the witness has lived at her property, which is opposite the applicant's property, for twenty years. She states that she passes by the applicant's property on a daily basis, and that the replacement and installation of new windows and doors on the south, west and east elevations of No. 37 South Lane were completed in October 2020 from her recollection, and have remained in place ever since.

2) Dated Photographs

The dated photographs from September and October 2020 at Appendices C & D show 15 of the 16 replacement windows and 2 of the 3 doors were installed on the property more than four years ago.

The photo at Appendix C shows the south elevation and is dated at 24th September 2020 – showing the new windows installed (note the front door was not replaced at the time – it is older - and does not form part of this application).

The photo at Appendix D shows the west elevation with the new windows and French doors x 2 and the date of this photo is contained within the internal file information (open the photo – right click – select 'file info' – and the date 15th October 2020 is displayed on the right hand side as shown below).



Both these photos therefore demonstrate in themselves that over 4 years has elapsed since 15 of the windows and 2 of the doors on the south and west elevations were installed.

There are no available dated photos of the single window and single door installed on the eastern side of the property (See Appendix E photo), however the other evidence within this application demonstrates that on the balance of probabilities, these windows were included in the total number of windows and doors cited within two other strands of evidence: the witness statements and Fensa certificate (see below).

3) FENSA Certificate

The FENSA certificate in Appendix F demonstrates that 16 windows and 3 doors were installed on No. 37 South Lane, Holmfirth on the 16th October 2020, therefore more than four years ago.

4) Immunity from enforcement action

We are not aware of any enforcement action during the four years preceding the date of this application.

Conclusion

It is submitted that the development described above is lawful at the date of this application under Section 191 of the Town & Country Planning Act.

The evidence listed above is considered to be sufficiently precise and unambiguous to prove, on the balance of probabilities, that operations relating to the replacement of 16 windows and 3 doors comprise building operations under Section 55; and that such operations were completed more than four years ago. This comprises the minimum required four-year immunity time period (under the transitional arrangements) before the date of this S191 Certificate of Lawfulness application.

Finally, as the Planning Practice Guidance recommends ⁶, should the Local Authority obtain its own evidence, this needs to be shared with the applicant to enable comment and the opportunity (if necessary) to produce counter-evidence.

In the light of the above, we respectfully submit that the aforementioned development is indeed lawful, and request that the Council grant the Certificate of Lawfulness accordingly.

Please do not hesitate to contact us if you require any further information, or clarification on any of the above.

Robert Halstead Chartered Surveyors & Town Planners

22nd October 2024

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⁶ Paragraph 006