
Appeal Decision

Site visit made on 18 February 2025

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 23rd April 2025

Appeal Ref: APP/T2350/X/24/3346426

1 Talbot Street, Chipping, Preston PR3 2QE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Dr David Houghton against the decision of Ribble Valley Borough Council.
 - The application ref: 3/2023/0219, dated 13 March 2023, was refused by a notice dated 22 March 2024.
 - The application was made under section 191(1)(b) of the 1990 Act.
 - The development for which a LDC is sought is 'reinstate the hatch to a doorway'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development for which the LDC is sought, in the banner heading above, is taken from the application form. The remainder of the description within that section of the application form relates to the history of the building and the purpose of the works which are not act of developments. The appellant ticked the box on the application form that he was applying for a LDC for existing building works. It is clear from the evidence before me that those works relate to the formation of a door opening and the insertion of a pedestrian door in that opening and they replaced a hatch that was in the front wall of the stone building. I have determined the appeal on that basis. The date of the application, in the banner heading above, is taken from the application form.
3. My decision rests on the facts of the case, on relevant planning law and judicial authority. The evidence before me refers to the planning merits of the development including access to the house by a wheelchair user. Nevertheless, the planning merits are not relevant in this appeal which relates to an application for an LDC. Moreover, the Equality Act 2010 and the public sector equality duty imposed by section 149(1) of that Act are not relevant to this appeal given that my decision rests on the facts of the case, on relevant planning law and judicial authority.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

5. In order for an LDC to be granted under section 191 of the 1990 Act, the burden of proof is with the appellant and the appropriate test of the evidence is the balance of probabilities. The onus is firmly on the appellant to show that reinstate the hatch to a doorway was lawful, at the date the LDC application was made, 13 March 2023.
6. Section 191(2) of the 1990 Act states that '*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.*' In this case there is no evidence before me to indicate that there was an enforcement notice in force at the date of the LDC application.
7. The door and door opening, that have been inserted within the front elevation of the stone building, are close to Talbot Street itself. They are opposite to the junction of Talbot Street and Windy Street and are clearly apparent in views from the public realm. The alteration to insert the door and its opening can therefore be reasonably treated as materially affecting the external appearance of the stone building. Moreover, given that a lintel would have been needed to be inserted to form the new opening the works can be treated as 'building operations' for the purposes of section 55 of the 1990 Act. Therefore, the building operations involve development that requires planning permission.
8. At the time the LDC application was made section 171B(1) of the 1990 Act provided that "*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 land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed*". Therefore, the appellant needs to show, on the balance of probability, that the building operations were substantially completed by 13 March 2019.
9. The appellant states on the application form that the building works were substantially completed on 10 September 2018. He also provided supporting information to the Council in association with the LDC application. However, I have not been provided with a copy of that supporting information by the appellant. As a result, other than that date on the application form, there is little evidence before me to demonstrate that the building operations were substantially completed by 13 March 2019.
10. Nevertheless, the Council's Planning Officer's Report states that '*the applicant has submitted supporting information which states that the shed was originally a public toilet with the hatch originally a doorway which was altered at a later date. In the supporting documents the applicant states that he moved into the property in 2012 and the coal lorry damage the stone jambs in 2016.*' According to that report the applicant had stated that the operations were carried out with the help of a neighbour who was a builder and that it was completed around Autumn 2017/Spring 2018. That report goes on to state that no supporting evidence such as receipts or engineer's reports have been submitted. Moreover, the date on the

application form for the substantial completion of the building works and the dates within the appellant's supporting information do not match and therefore there is ambiguity as to when they were substantially complete.

11. As stated above, the onus of proof rests with the appellant to demonstrate, on the balance of probabilities that the building operations were completed by the relevant date. Even if the supporting information cited above was before me, in my judgement that burden would not have been discharged in a precise and unambiguous manner. As with all LDC applications, it is open for fresh applications to be made if, for example, additional evidence can be provided.
12. The Council has stated that *'it is considered that the proposed works require listed building consent, in which case Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 allows the serving of an enforcement notice at any time i.e. there is no time restriction. As the time period for the serving a listed building enforcement notice has not expired then the Council is unable to issue a certificate in accordance with Section 171B of the Town and Country Planning Act.'* Nevertheless, even if I agreed with the Council in this regard, I have found that for the purposes of section 55 of the 1990 Act the works can be treated as 'building operations' that involve development that requires planning permission. Additionally, it has not been demonstrated that the time for enforcement action has expired. As such, whether the works require listed building consent would not alter those findings, and it is therefore not necessary to consider that matter any further.
13. Nonetheless, I would highlight to both main parties that case law has found that any structure fixed to the principal building at the date of listing will be treated as part of the listed building for the purposes of section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990, provided that the structure was *"ancillary"* to the principal building at the date of listing (or on 1 January 1969 in the case of buildings listed prior to that date).

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for reinstate the hatch to a doorway is 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.

D Boffin

INSPECTOR