



Delegated Report

Lawful Development Certificate (Existing)

Planning Application No: 20240955

Location: 16 William Street Gravesend Kent DA12 1HD

Description: Application for an Existing Lawful Development Certificate for replacement of wooden sash windows with UVPC sash windows at the front of the property.

Applicant: Mr John Mason

Site Visit Date: For previous application ref. 20240727

Submitted Documents/Plans

- Application form;
- Location Plan;
- Drawing no. 20/1024/01 – Proposed Replacement Windows;
- Drawing no. 24/1024/02 – Replacement Windows;
- Picture; and
- Text exchange with window company (non-public).

Site Description

The application site consists of a two storey terraced dwelling situated in the Windmill Hill Conservation Area and covered by an Article 4 Direction (Art 98/1).

Relevant Planning History

Reference	Description	Decision	Decision Date
20240727	Retrospective application for replacement windows with like for like windows.	Refused	03.10.2024

Development Plan

Not applicable.

Material Consideration

- Town and Country Planning Act 1990 (as amended)
- Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024

Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate that is considered on its facts and relevant planning law. As confirmed in national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

Officer Analysis

This application seeks a determination by the Local Planning Authority as to whether the windows that have been installed in the front elevation of the dwelling are immune from enforcement action due to the period of time that they have been in place.

The law relating to Lawful Development Certificates can be found in Sections 191 to 193 of the Town and Country Planning Act 1990 (as amended). For the purposes of this application the relevant section is 191, being a certificate sought for an existing development.

The application seeks to determine that the windows that have been installed in the front elevation of the dwelling are lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990 by virtue of the passage of time. Section 191(2) and (3) of the Town and Country Planning Act 1990 prescribes:

191(2) 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.

191(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

References to Sections 171B(1)-(3) of the Town and Country Planning Act 1990 (as amended) sets out the time periods for taking enforcement action relating to different types of unauthorised development;

(1) 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;

(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and

(b) in the case of a breach of planning control in Wales, four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of;

(a) in the case of a breach of planning control in England, ten years beginning with the date of the breach, and

(b) in the case of a breach of planning control in Wales, four years beginning with the date of the breach.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

Notwithstanding the above, it is noted that the evidence provided with this application indicates that the works would have been completed prior to the 'ten year rule' for Section 171B (1) (a) being in place. Formerly, the four year rule would have been applicable. Transitional provision for these instances are set out by the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024, as indicated below:

Transitional provision: time limits for enforcement

5. The amendments made to the 1990 Act by section 115 of the 2023 Act (time limits for enforcement) do not apply where—

(a) in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (5) (time limits), the operations were substantially completed, or

(b) in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred,

before the day on which that section comes into force.

As such, dependant on the evidence provided and any evidence gathered by the Local Planning Authority, the existing development could be subject to the four year rule, rather than the ten year rule, being substantially completed before April 2025.

This application states that the windows were substantially complete by 16 July 2020.

Taking the application on face value, the key date in this case is whether the windows were installed from a date four years prior to the current application being made, namely since 21 October 2020.

Paragraph 006 of the Government Guidance on Lawful Development Certificates states that:

'The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.'

'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.'

Assessment of information submitted by applicant:

Application form

Under the grounds for the application the applicant has ticked 'The use as a single dwelling house began more than four years before the date of this application' which is incorrect as the proposal does not relate to the use of a dwellinghouse.

However, in response to the question on when the use or activity began, or the building works substantially completed, that date was the 16 July 2020.

Drawing no. 20/1024/01 – Proposed Replacement Windows

This drawing provides pre-existing elevations, an existing front elevation and existing floor plans. It does not provide any evidence relating to timings on when the windows were replaced etc.

Location Plan

This drawing shows the site at 1:1250 scale and outlined in red. It does not provide any evidence relating to timings on when the windows were replaced etc.

Drawing no. 24/1024/02 – Replacement Windows

This drawing shows the site at 1:200 scale and outlined in red. It does not provide any evidence relating to timings on when the windows were replaced etc.

Picture

The picture is a screenshot from a mobile phone showing a photograph of part of a plastic window and surrounding yellow brickwork which is dated 16 July 2020. It is not identified what property this is but from visiting the site it can be seen this picture does show no. 16 William Street.

Text exchange with window company (non-public)

Shows a text exchange from July 2020 which is about arranging the installation of windows and then a request for a certificate for them. There isn't any address mentioned etc. but the implication is clearly that it relates to no. 16 William Street.

Evidence gathered by case officer

Google Street View

Image from 2022 (shows the new windows installed)



Image from 2018 (shows the original windows)



The images show that between 2018 and 2022, the windows in the front elevation had been replaced.

It is considered that from a review of the information provided by the applicant and that gathered from the case officer it is evident that the windows had been installed by July 2020. As such, the development is subject to the four year rule. No enforcement action was taken and consequently the windows are now immune from enforcement action and the installation of the windows are lawful through the passage of time.

Conclusion

This application seeks to confirm that the existing windows installed in the front elevation are lawful. It is considered that the applicant has provided sufficient evidence that on the balance of probability, the windows in the front elevation were installed from a date in excess of four years prior to the application being made, namely since 21 October 2020.

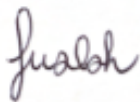
The Borough Council has no evidence to cast doubt on the applicant's claim which could be sustained if the application was refused and appealed.

The Borough Council is therefore satisfied that the windows are exempt from enforcement action by reason of section 171B (1) of the Town and Country Planning Act 1990, as amended (the four-year period still relevant given that the development was completed prior to the amendments to section 171B (1) concerning the 'ten year rule' being made.)

The development is therefore lawful by reason of section 191(2)(a) of the Town and Country Planning Act 1990, as amended and a Certificate of Existing Lawful Use can therefore be duly issued.

Recommendation

Grant lawful development certificate

Case Officer:	Ms Rebecca Harrison	Team Leader:	Mrs Faye Walsh
Signed:	<i>Rebecca Harrison</i>	Signed:	
Dated:	20th December 2024	Dated:	23 December 2024