

Delegated Report

Lawful Development Certificate (Existing)

Application no:	20240957
Location	1 Wilfred Street Gravesend Kent DA12 2HA
Proposal:	Application for an Existing Lawful Development Certificate for the replacement of the front door and two windows to the rear of the property.
Applicant:	Miss Sukie Dhonta
Site Visit	N/A Desktop Assessment

Preliminary Matters

Site Context

The property lies within the King Street Conservation Area and is covered by an Article 4 direction (Ar/08/1.) Article 4 Directions were introduced in an attempt to address unsympathetic alterations to dwellings that harm or erode the character of the area. The aim of the Direction in regard to windows and doors is to resist the loss of traditional features. As such, planning permission is required for development that fronts the highway, as specified within the Direction.

During the course of the application, it was noted that the description and information provided with this application related to the installation of a replacement front door and two windows to the rear. Given that the two windows were to the rear of the property not fronting the highway, it was ascertained that these windows would not fall under the protection of the article 4 direction. As such, the agent was contacted on 26.11.24 to clarify whether the description and information provided was correct and to query whether the description should instead relate to the front two windows. The agent responded that the inclusion of the rear windows within the description was correct. As such, this Lawful Development Certificate does not cover the two windows to the front of the property that appear to have been installed some time ago, without planning permission.

Plans & Documents

Application Form;
 Supplementary Information – Planning Statement;
 Supplementary Information – Invoice for Door;
 Supplementary Information – Invoice for Windows;
 Supplementary Information – Window Survey;
 Supplementary Information – Fensa Certificate;
 Supplementary Information – Supporting Information regarding Pre- Existing Window and Door;
 Supplementary Information – Affidavit;
 Supplementary Information – Email from Installsure;
 Supplementary Information – Pictures;

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Supplementary Information - Pictures;
Supplementary Information - Pictures;
Supplementary Information – Invoice;
Elevations and Floor Plans – Pre- Existing (received on 31.10.24);
Drawing No. 01 – Elevations Floor Plan and Roof Plan – Existing;
Drawing No. D01 – Block Plan; and
Drawing No. D02 – Site Location Plan.

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

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 use or development.

The application seeks to determine that the existing front door and existing rear two windows, is 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. This shall be considered within the relevant section of this report below.

Relevant Planning History

No relevant history.

Development Plan

As this is an application for a Lawful Development Certificate the matter is dealt with on the basis of an assessment of the available evidence; the issue of whether the use complies or not with the Development Plan does not apply in such circumstances.

Consultations, Publicity and Representations

There is no statutory requirement to consult third parties and any representations received would be irrelevant to the determination of the application. In this instance, no representations were received.

Analysis

This application states that the installation of the front door and the two rear (bathroom and kitchen) windows were installed without planning permission in 2015, and the works are subject to the four year rule.

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.'

Front Door

It is evident from the information provided, google images and correspondence with the Planning Enforcement Team that the installation of the front door took place in 2015. As such, the development is subject to the four year rule. No enforcement action was taken and consequently the front door is now immune from enforcement action and the installation of the front door is lawful through the passage of time.

Rear Windows

As aforementioned above, the rear windows of the dwelling are not covered by the Article 4 Direction in place at the property. As such some alterations can be carried out without planning permission, providing the works comply with the General Permitted Development Order (2015) (as amended). However, the application form provided with this application, lists the 'four year rule' as the grounds for obtaining this lawful development certificate. It is apparent from the evidence provided that the two rear windows (kitchen and bathroom) were installed in 2015. As such, the development is subject to the four year rule. No enforcement action was taken and consequently the windows would be immune from enforcement action, irrespective of whether the works would fall under permitted development rights, and the installation of the two rear windows (as described) is lawful, through the passage of time.

Conclusion

This application seeks to confirm that the existing front door and rear kitchen and bathroom windows are Lawful. The applicant has demonstrated that in the balance of probabilities, the development has been in situ since 2015. Consequently, the development is subject to the four year rule and is therefore lawful due to the passage of time.

Recommendation: <u>Grant</u> Lawful Development Certificate
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Case Officer:	Mrs Lucy Hankin	Team Leader:	Richard Hart
Signed:	L Hankin	Signed:	<i>R Hart</i>
Dated:	3rd December 2024	Dated:	4th December 2024