
Appeal Decision

Site visit made on 12 December 2018

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2018

Appeal Ref: APP/H1033/X/17/3173648

18 Bath Road, Buxton SK17 6HH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr S Walsh against the decision of High Peak Borough Council.
- The application Ref HPK/2017/0027, dated 19/01/2017, was refused by notice dated 17/03/2017.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is proposed replacement of existing timber sliding sash windows with new PVC sliding sash windows.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Reasons

2. The appeal building is a three storey end of terrace Victorian villa converted to flats, situated in Buxton Central Conservation Area and Article 4 area. The proposed lawful development certificate relates only to the windows on the east/side elevation of the building. In total there are 14 windows on this elevation, and are four lights timber sliding sash windows with the exception of the side bay windows which are two lights timber sliding sash. The stone sills, surrounding timber bays and mullions would remain unchanged. The proposal would be to change the sliding sash elements of the windows to uPVC sliding sash windows with wood frame effect.
3. There is no disagreement between the parties that the installation of replacement windows would amount to a building operation as defined by s55(1) of the Act. Section 55(2), however, goes on to clarify at subsection (a)(ii) that the carrying out of operations which do not materially affect the external appearance of the building shall not be taken to involve development of the land. The issue in dispute is whether the proposed operations in this case would materially affect the external appearance of the building. The Council say that the change to the external appearance is material and that there are no permitted development rights to change windows on flats because

they are not dwelling houses within the meaning of the Order¹. In addition the Council say that Buxton Article 4 Direction prevents such works to elevations that front a relevant location.

4. The appellant refers to the case of *Burroughs Day v Bristol City Council* [1996] 1 PLR 78 where it was held that it is the effect on the external appearance and not just the exterior which must be considered; and that the effect on the external appearance must be judged in relation to the building as a whole and not by reference to a part of the building taken in isolation.
5. No. 18 Bath Road is a large end of terrace building fronting the road. The road rises relatively steeply to the east. No. 19 is the beginning of the next terrace block of equal stature to No. 18 but separated by a side garden and is situated on higher ground. Whilst windows and bays are notable features on the east/side elevation of No. 18 due to the topography and the angled view from the road and the intervening higher front garden of No. 19, broadly most of the first floor and second floor windows and bays are visible from the roadside. Although the windows are visible at an angle they are seen in the context of these constraints, and as the elevation is a secondary one, looking across and up to the garden of No. 19, the elevation presents a glimpsed view to passers-by on Bath Road. The ground floor windows of this elevation are hardly noticeable given that they are below the boundary wall and the vegetation of next door's garden.
6. At the site visit I saw a sample of the window type it is purported to be installed. Apart from the marginal difference in the horn detail, the frame, beading, glazing bars, chamfered sill, meeting rail, 4 light sliding sash, finish inside and between the sashes, and the wood grain effect, matched quite precisely the relevant details of the existing sash windows on the building. There are slight variations in the proposed technical drawings to the existing sash windows detailed plan, but the difference is only very marginal. There is a 3mm difference in the cross section of the proposed unit to that of the existing sash unit, resulting in a similar recessed position for the proposed window on the stone sill as that of the existing window.
7. The replacement windows have been closely engineered to reflect the dimensions of the sash window in detail. In my view, the change from the timber sliding sash to the specified uPVC sliding sash window in the LDC application would not as a matter of fact and degree materially affect the external appearance of the building as a whole, and shall not be taken to involve development.
8. Given this conclusion, express planning permission is not required for the operation the subject of this application under Section 55(2)(a)(ii). Section 57 is not engaged, and neither is Section 58, planning permission granted by development order, since the operation does not involve development.
9. For these reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development was not well founded. The appeal succeeds, and I exercise accordingly the powers transferred to me in Section 195(2) of the 1990 Act as amended.

¹ Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015

Iwan Lloyd

INSPECTOR

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

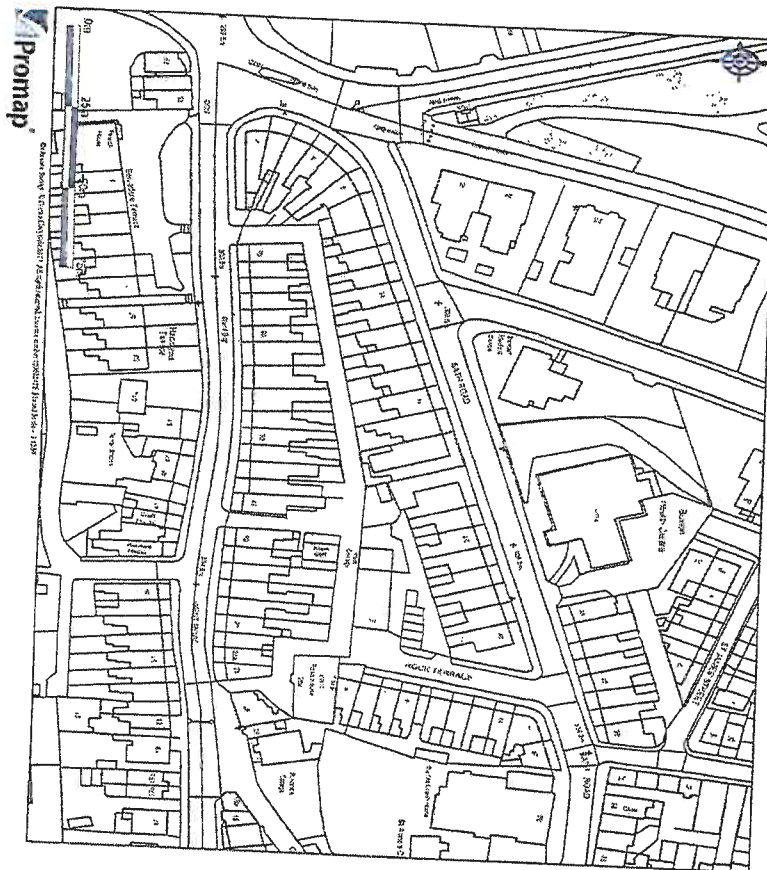
Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 February 2018
by Iwan Lloyd BA BTP MRTPI

Land at: 18 Bath Road, Buxton SK17 6HH

Reference: APP/H1033/X/17/3173648

Scale: Not to scale



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