The Planning Inspectorate

Appeal Decision

Site visit made on 3 June 2015

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 June 2015

Appeal Ref: APP/F0114/X/15/3005007
36 Dafford Street, Bath, BA1 6SW

- 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 Johann Gulotti against the decision of Bath & North East Somerset Council.
- The application Ref 14/05221/CLPU, dated 12 November 2014, was refused by notice dated 7 January 2015.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The proposed development for which a certificate of lawful use or development is sought is replacement of existing timber sash windows with double glazed windows to match.

Decision

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

Main Issue

2. Whether a sui generis House in Multiple Occupation (HMO) is a dwelling?

Reasons

3. The proposal is to replace the existing windows in No 36 Dafford St with double glazed windows of a similar design but in uPVC. As the building is not listed such a change would usually be permitted development under Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995. However the Council consider that it is not a dwellinghouse and so no rights conferred by Class A apply.

4. The building is used as a HMO with 10 bedrooms. There is no dispute that it does not fall within Class C4 of the Use Classes Order (1987). This class refers to "*Use of a dwellinghouse by not more than six residents as a "house in multiple occupation*"". The use is therefore sui generis, that is it does not fall within any specific class of the UCO.

5. However the UCO has an application that is limited to determining what material changes of use can be made without the need for planning permission. Thus a change can be made from C3 to C4 as that is allowed by the Town and Country Planning (General Permitted Development) (England) Order 2015. But

a change cannot be made from C4 to a 10 bed HMO as the latter is sui generis, and so such a change would require planning permission. That is not the same as saying that a 10 bed HMO cannot, by definition, be a dwelling. That is a matter of fact and degree in each case.

6. I have been referred to advice produced by the Planning Inspectorate which says that "Houses in Multiple Occupation, *including* those which fall within Class C4 *can* benefit from permitted development rights granted to dwellinghouses by the GPDO". I have italicised the key words in that sentence which agree with the situation I have outlined above. The advice goes on to say that case law has established the distinctive characteristic of a dwellinghouse is "its ability to afford those who use it the facilities required for day to day private domestic existence". The relevant case is *Gravesham BC v SSE and M W O'Brien (1982) 47 P&CR 142 [1983]*.

7. The appellant has provided a description of the use of the HMO, floor plans and a copy of a sample tenancy agreement. It seems the building is occupied by 10 people in private bedrooms, sharing a number of bathrooms and a large communal kitchen/dining/living room, with a separate utility for laundry purposes. They pay all the bills communally. In the absence of any evidence to the contrary it would seem this building is occupied as if it were a large house with 10 people living in it. In this case I consider it is a dwellinghouse and so does benefit from permitted development rights.

8. The Council say that DCLG have clarified the issue by saying, and they quote, "with regards to HMOs which are considered sui generis the position in respect of permitted development rights under Part 1 of the GPDO has not been affected by the recent legislation". I am unclear as to what this somewhat gnomic pronouncement means, but I am unaware of any advice issued by DCLG to this effect which I note is not found in the PPG or NPPF. In any event it does not affect the situation in law regarding the status of HMOs as dwellinghouses or not, which remains a matter of fact and degree in each case.

Simon Hand

Inspector

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 12 November 2014 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason: They are permitted development by virtue of Class A, of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 because the property is a dwellinghouse.

Signed

Simon Hand

Inspector

Date: 08.06.2015

Reference: **APP/F0114/X/15/3005007**

First Schedule

Replacement of existing timber sash windows with double glazed windows to match.

Second Schedule

Land at 36 Dafford Street, Bath, BA1 6SW

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

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.