



Appeal Decision

Site visit made on 11 June 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2024

Appeal Ref: APP/Z0116/X/24/3341053

Flat, Alma Church, St. Johns Road, Clifton, Bristol BS8 2ES

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Alma Church against the decision of Bristol City Council.
 - The application ref 23/02790/CP, dated 13 July 2023, was refused by notice dated 1 February 2024.
 - 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 described as *'We wish to replace four single glazed windows with double glazed uPVC windows in the flat, on the first floor, at the back of the old church.'*
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Whether an LDC should be issued for the proposed works described in the banner heading above is strictly a matter of fact and law. Other matters, such as planning merits considerations, cannot form part of my deliberations.

Main Issue

3. The main issue in the appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether it has been shown that planning permission is granted for the proposed works by Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

4. The onus is on the appellant to show why an LDC should be issued, the relevant test of the evidence being on the balance of probability.
5. The appeal property contains a church, with a residential flat on the first floor. The property is located within the Whiteladies Road Conservation Area. The proposed works involve replacing four single glazed windows which light the interior of the flat with new double glazed uPVC framed windows.
6. The proposed works fall within the meaning of 'development' set out in s55(1) of the Town and Country Planning Act 1990 (the Act), which includes the carrying out of building operations in, on, over or under land. For the purposes of the Act, 'building operations' includes structural alterations of or additions to

- buildings and other operations normally undertaken by a person carrying on a business as a builder.
7. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the Act. At s191(2)(a), the Act states that operations are lawful where no enforcement action may be taken in respect of them. This includes for example, where the operations benefit from a grant of planning permission.
 8. At Article 3, Schedule 2, Part 1, the GPDO grants planning permission for certain development within the curtilage of a dwellinghouse. Class A of Part 1 permits the enlargement, improvement or other alteration of a dwellinghouse, where the relevant limitations and conditions of that Class are satisfied.
 9. However, a 'dwellinghouse' as defined in Article 2(1) of the GPDO does not include a building containing one or more flats, or a flat contained in such a building, in relation to Part 1. As a result, the proposed works cannot benefit from the planning permission granted by Class A of Part 1. Neither does another Class in Part 1 or in any other Part of the GPDO grant permission for the proposed works in relation to a flat.
 10. The above being the case, whether the proposed works would satisfy the condition at paragraph A.3(a) of Class A, which concerns the use of external materials that are similar in appearance to those used in the construction of the exterior of a dwellinghouse, has no bearing on the outcome of this appeal.
 11. The Council made no reference to the GPDO definition of a dwellinghouse in the reasons for refusing to grant an LDC, the matter first being raised in their written submissions in response to the appeal. Even so, I am bound to determine this appeal in accordance with the statute. It would be legally incorrect to issue an LDC in respect of proposed works which are plainly not lawful. It is open to the appellant to make a planning application in respect of the proposed works, the final decision on which would, in the first instance, rest with the Council.
 12. Therefore, the appellant has been unable to show that the proposed works are granted planning permission by Part 1 of the GPDO, the available evidence showing otherwise. It follows that the proposed works are not lawful for planning purposes.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of replacing four single glazed windows with double glazed uPVC windows in the flat was 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 as amended.

Stephen Hawkins

INSPECTOR