



# Planning Statement

Proposal – Certificate of Lawful Proposed Development (CLOPUD) for the replacement of existing timber sliding sash windows with new PVC sliding sash windows

Site: 18 Bath Road, Buxton, Derbyshire, SK17 6HH

for Mr Stuart Walsh

16-482



Project : 16-482  
Site address : 18 Bath Road, Buxton,  
Derbyshire, SK17 6HH  
Client : Mr Stuart Walsh  
  
Date : 17 January 2017  
Author : Clare Gascoigne

Approved by :

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## 1. Introduction

- 1.1 This statement has been prepared to accompany an application for a Certificate of Lawful Proposed Development submitted under Section 192 of the Town and Country Planning Act 1990.
- 1.2 The applicant seeks confirmation that the replacement of the windows on the side elevation of the property from timber to UPVC is lawful, if carried out and would not require express planning permission.
- 1.3 It will be demonstrated that the proposal does not require planning permission under the Town and Country Planning Act 1990, section 55 (2).
- 1.4 This is confirmed by the barrister's opinion enclosed with this application.

## 2. Context

### Site location and description

- 2.1 The application site comprises an end three storey terrace property situated on Bath Road. The property is located within the Buxton Central Conservation Area.
- 2.2 Whilst the property used to be a single dwelling house, it was converted into flats many years ago.

### Relevant planning history

- 2.3 The relevant planning history is summarized as follows:-
  - Replacement windows on the rear elevation from timber to UPVC - approved 2015 (Application Code: HPK/2015/0224).
  - Replacement of some windows on the side elevation from timber to UPVC – refused 2015 (Application Code: HPK/2015/0547).
  - Replacement of side windows from timber to UPVC - refused 2016 (Application Code: HPK/2016/0050).

- Replacement of existing timber framed windows (W1-W14) with new PVC sliding sash windows - refused 2016 (Application Code: HPK/2016/0441).

### 3. Relevant Planning Legislation

- 3.1 This application seeks a positive Certificate of Lawful Proposed Development to confirm the replacement of the existing timber framed sliding sash windows with UPVC sliding sash windows does not require planning permission.

#### The Town and Country Planning Act 1990

- 3.2 Section 192 of the Act refers to the certificates of lawfulness of proposed use or development.

- 3.3 Subsection (1) states:-

*"If any person wishes to ascertain whether:-*

- any proposed use of buildings or other land; or*
- any operations proposed to be carried out in, on, over, under land;*

*Would be lawful, we may make an application for the purpose to the local planning authority specifying the land and describing the use or operation in question."*

- 3.4 Section 192 (2) states:-

*"If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operation described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."*

- 3.5 Section 57 of the Town and Country Planning Act 1990 states that planning permission is required for the carrying out of any development of land.

- 3.6 Section 55 of the Act states:-

*"The following operations or uses of land shall not be taken for purposes of this act to involve development of the land;*

*a) the carrying out for the maintenance, improvement or other criteria of any building or works which*

- i) affect only the interior of the building; or
  - ii) do not materially affect the external appearance of the building
- and are not works for making good or damage or works begun after December 5<sup>th</sup> 1968, for the alteration of a building providing additional space underground.

## National Planning Policy Guidance

### Section 23 – Lawful Development Certificates

3.7 This section states that:

*“A local planning authority need to consider whether, on the facts on the case the relevant planning law, the specific matter would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.”*

3.8 It also states that:-

*“In determining an application for a prospective development under section 192 a local planning authority need to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”.*

(Para ID: 17C-009-2014 0306)

## 4. Planning Considerations

### Proposal

4.1 The applicant proposes to replace the existing timber sliding sash windows with high quality UPVC sliding sash windows on the side elevation of the property. The specifications of the replacements are:-

- A high quality construction and finish with deep recess to allow both sections of the window frame to slide up and down.
- Four separate panes of glass with external glazing bars used to replicate the existing framework rather than two large panes of glass with stuck on glazing bars;
- The internal finish of the glass in between the glazing panels would be white to match the existing frame and not silver to reduce the apparent depth of the double glazing;
- A chamfered framework to give the effect of putty as on a traditional timber window frame;

- The UPVC has a wood grain finish to replicate the existing timber frames; and
- Internal metalwork, such as locks and sliders which replicate the existing timber sliding sash windows.

- 4.2 Of the 14 windows on the side elevation of the property to be replaced, five are bay windows with the remainder being sliding sash. It is proposed to replace only the sliding sash elements of the bay windows to match in with the remaining sliding sash windows. The timber framework of the bays would be retained.
- 4.3 It is clear that due to the manufacturers details of this high quality product that they are intended to look exactly the same as the existing windows and there would be no visual change to the premises.
- 4.4 The proposed replacement windows would not materially affect the external appearance of the property.
- 4.5 It has been demonstrated through this statement and with the support of the accompanying Barrister's opinion (appendix EP1) that the replacement windows constitute permitted development under section 55 (2) (a) (ii) of the 1990 Town and Country Planning Act.
- 4.6 The conclusion of the Barrister Opinion is as follows:

*"Accordingly, the works undeniably satisfy the criterion of being for the 'maintenance, improvement or other alteration' of the Premises. Moreover, they satisfy the exception for development within s.55(2)(a)(ii) of the TCPA 1990 in that the works will not 'materially affect the external appearance of the building'. Indeed, as stated, the very intention of the works is for them to not affect the external appearance of the building at all, let alone whether they 'materially' affect the external appearance."*

## 5. Summary and Conclusions

- 5.1 This application seeks a positive certificate of lawful proposed development to confirm that the proposed replacement to the existing timber windows with UPVC sliding sash does not require planning permission.
- 5.2 The National Planning Policy Guidance advises that the determination of this certificate application should be made solely on the facts of the relevant planning law. It also advises the planning merits are not relevant at any stage of the application process. The development

clearly would be lawful. As such, in accordance with section 192 of the Town and Country Planning Act a positive certificate should be granted.

## 6. Appendix

EP1      Opinion of Killian Garvey, Barrister dated 12 January 2017



EP1

**18 BATH ROAD**  
**RE: CLOPUD APPLICATION**

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**SUBMISSION ON BEHALF OF THE APPLICANT**

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**INTRODUCTION**

1. I am instructed by Mr Stuart Walsh in respect to his application<sup>1</sup> to High Peak Borough Council ('the Council') for a Certificate of Lawfulness of Proposed Use or Development ('CLOPUD') relating to the change of timber windows to UPVC on the side elevations of 18 Bath Road, Buxton, Derbyshire, SK17 6HH ('the Property').
  
2. I am of the view that these proposed works do not constitute development and thus planning permission is not required for them. The purpose of this submission is to briefly explain this conclusion.

**LAW**

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<sup>1</sup> Pursuant to section 192 of the Town and Country Planning Act 1990

3. Section 57 of the TCPA 1990 states that planning permission is required for the carrying out of any development of land.
4. Section 55 of the TCPA defines what is meant by the term 'development'.
5. Section 55(2) says (with emphasis):

*The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—*

*(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—*

- i. affect only the interior of the building, or*
- ii. **do not materially affect the external appearance of the building.***

*and are not works for making good war damage or works begun after December 5, 1968 for the alteration of a building by providing additional space in it underground*

6. In **Burroughs Day v Bristol City Council** [1996] 1 E.G.L.R. 167 the issue was whether certain works to a listed building constituted development requiring planning permission. The works included the provision of a lift shaft housing, which involved alteration to the roof and replacement of windows to the front elevation of the building. The court held that the works did not constitute development. It was

not sufficient merely that works should affect the exterior of the building: the test was that they should materially affect the 'external appearance', and this implied that the change must be visible from a number of normal vantage points: visibility from the air, or from a single building, would not be sufficient. The change in external appearance had to be judged for its materiality in relation to the building as a whole and not by reference to a part of the building taken in isolation.

### **SUBMISSION**

7. It is submitted, on behalf of Mr Walsh, that the proposed works do not constitute development. Mr Walsh intends on replacing the defective current timber windows with UPVC windows, which are intended to look exactly the same as the timber windows. The intention is that there will be no visual change to the Premises. Indeed, the motivation is to maintain the same aesthetic quality, whilst 'fixing' the current defective windows.
8. Accordingly, the works undeniably satisfy the criterion of being for the '*maintenance, improvement or other alteration*' of the Premises. Moreover, they satisfy the exception for development within s.55(2)(a)(ii) of the TCPA 1990 in that the works will not

*'materially affect the external appearance of the building'*. Indeed, as stated, the very intention of the works is for them to not affect the external appearance of the building at all, let alone whether they *'materially'* affect the external appearance.

9. Whilst there is an element of planning judgment in determining whether a change is material, it is submitted that this is not one of those occasions where this test is close-cut. It is plain that the intended works would not materially affect the external appearance. Accordingly, planning permission is not required and the CLOPUD should be granted.

## **CONCLUSION**

10. For all these reasons, therefore, the Council are respectfully invited to grant the CLOPUD for the intended works.

***Killian Garvey***

12<sup>th</sup> January 2017



**18 BATH ROAD**  
**RE: CLOPUD APPLICATION**

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**SUBMISSION ON BEHALF**  
**OF THE APPLICANT**

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*Killian Garvey*



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