

DELEGATED DECISION REPORT

HPK/2022/0527
Valid 21/11/2022

36A CHAPEL ROAD
WHALEY BRIDGE
DERBYSHIRE
SK23 7JZ

LAWFUL DEVELOPMENT
CERTIFICATE FOR AN
EXISTING USE- SEEKS TO
ESTABLISH THAT THE
CURRENT USE OF THE
PROPERTY FOR A SINGLE
DWELLING AND ANY
ASSOCIATED BUILDING
WORKS IS LAWFUL AS THE
NAMED PROPERTY HAS
BEEN IN USE AS A SINGLE
DWELLING ON A
CONTINUOUS BASIS FOR
WELL OVER 4 YEARS
(CERTIFICATE OF
LAWFULNESS –EXISTING)

MAIN ISSUES

Whether the land identified within the application has been occupied as a dwelling (Use Class C3) in excess of 4 years, and as such is lawful.

DESCRIPTION OF SITE

The application dwelling is a part two storey, part single storey end terraced property which lies within the settlement boundary for Whaley Bridge as defined by the Local Plan policies map. The dwelling is located on a corner plot which lies at the junction of Chapel Road and Rock Bank. It appears as though the dwelling may have been created by virtue of the 36 Chapel Road being sub-divided and/or land swapping occurring. There is no planning history for site.

PROPOSAL

The application seeks a Lawful Development Certificate to establish that the existing use of land of the property known as 36A Chapel Road is lawfully a dwelling.

The application has been supported by a Planning Statement

PLANNING HISTORY

HPK/2022/0374 - Application for a Lawful Development Certificate for a Proposed removal of an area of the existing boundary wall to create a vehicle access with associated relay of hardstanding together with a lean too open porch to the southern elevation – Unlawful – 06/10/22

OFFICER COMMENTS

Background and Relevant Legislation

This certificate has been submitted under s.191 of The Town and Country Planning Act to determine whether an existing use of 36A Chapel Road, as a dwelling, is lawful. S.191(2) states that uses and operations are lawful at any time if no enforcement action may be taken in respect of them. S.171B sets out the time limits for where no enforcement action may be taken and confirms, where the breach relates to use of a building as a dwelling, that no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. In this instance, therefore, it needs to be established whether the use has endured continuously for a period of more than 4 years from the date that the application was submitted to the LPA. The relevant date is therefore 21st November 2018, from which a continuous use must be demonstrated.

S.191(4) states that if the LPA are provided with information satisfying them of the lawfulness at the time of the application of the use then they shall issue a certificate to that effect. Planning Practice Guidance also confirms that the applicant is responsible for providing sufficient information to support an application and, in the case of applications for existing use, of a LPA has no evidence itself, nor any from others, to contradict or make the applicants version of events less than probable there is no good reason to refuse the application, provided that the evidence alone is sufficiently precise and unambiguous to grant on the balance of probability.

Assessment of Evidence Submitted

The application has been supported by a planning statement. The most heavily relied upon evidence within the submission are photographs of HM Land Registry Title documents. These have not been provided in full as separate documents. Nonetheless, they do indicate that the land identified has been a separate unit of occupation, known as 36A Chapel Road since 2007. The LPA has obtained separate copies of the Title documents which corroborates the documentation submitted.

Additionally, the application includes two letters from neighbours at No.36 and 38. The supporting statement purports these to be signed affidavits. However they do not appear to have been signed in the presence of a legal representative, or counter signed, and are limited in evidence.

Assessment of Any other Evidence

No evidence has been provided by third parties.

The LPA has been able to obtain some limited additional information. Mapping data indicates that a property known as 36A has existed in this location albeit in a different configuration to that suggested in the application. Due to these irregularities, this brought the LPA to question the lawfulness of a dwelling on an earlier application. The information submitted with this application which includes title deed information, which is consistent with the red edge submitted. The site is physically subdivided from 36 and there is no evidence to suggest any interconnectivity.

The Revenues Team within the Council has confirmed that they have checked the Council Tax records and Council Tax has been paid since 1.4.93.

Summary and Conclusions of Evidence Submitted

The application has been supported by limited information to support the case for the continuous use of the building as a dwelling for 4 years. Nonetheless, crucially, the application includes some information relating to HM Registry Title Deeds which the LPA has gained full copies of. This indicates a separate dwelling which has existed from at least 2007. This is corroborated by Council Tax records. It is considered that this is sufficiently unambiguous to demonstrate, on the balance of probabilities, the version of events being correct and the LPA has no evidence to the contrary.

CONCLUSIONS

There is sufficient evidence, on the balance of probabilities that the property known as 36A Chapel Road has been occupied for a continuous period in excess of 4 years and is lawful.

Any certificate issued should amend the description of use, for clarity, to “use of building and land as a dwelling”.

OFFICER RECOMMENDATION: Approve Certificate

Case Officer: Declan Cleary

Recommendation Date: 16/01/2022

X 

Signed by: Ben Haywood

On behalf of High Peak Borough Council