

DELEGATED DECISION REPORT

HPK/2023/0178
Valid 15/05/2023

41 MARKET STREET
BUXTON

APPLICATION FOR A LAWFUL
DEVELOPMENT CERTIFICATE
FOR AN EXISTING CHANGE
OF USE FROM (USE CLASS
C3) RESIDENTIAL TO (USE
CLASS SUI GENERIS)

(CERTIFICATE OF
LAWFULNESS - EXISTING)

MAIN ISSUES

The main issue for consideration is whether or not the proposed development falls within the allowances of the Town & Country Planning (General Permitted Development) (England) Order 2015.

DESCRIPTION OF SITE

The application site is a three-storey terraced property on Market Street. To the north the application site is bound by No. 39 Market Street, with a vehicular access at street level between the application site and the neighbouring property. The vehicular access is within the red line boundary indicated on the location plan. It serves the rear of the property which leads to a garage and parking area. To the south the application site is bound by No. 43 Market Street which is another terraced property with a similar style pitched roof dormer to the front elevation, as the two at the application site.

PROPOSAL

Application for lawful development certificate for an existing change of use from (Use Class C3) residential (Use Class Sue Generis).

EVIDENCE OF EXISTING USE AS SUBMITTED BY THE APPLICANT

The application is accompanied by various supporting documents, which can be summarised as follows:

- A number of tenancy agreement contracts from different individuals renting out different rooms within the building for a term of 6 months at a time
- Floor Plans
- Power of Attorney documents

RELEVANT LEGISLATION AND NATIONAL PLANNING POLICIES

Town and Country Planning Act 1990

Section 191(1) makes provision for a person to apply for a determination as to whether an existing use or development can be considered lawful.

Section 191(2) sets out the circumstances in which an existing use or development would be lawful.

According to section 191(2)(a) & (b) an existing use of land can only be lawful where on the date of the application, no enforcement action could have been taken in respect of that use; and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

HPK/2019/0538 – Lawful Development Certificate for existing use as a HMO. CLUE-REF.

OFFICER COMMENTS

The application submitted has been made under Section 191 of the Town and Country Planning Act 1990 (the 1990 Act). It is an application for a Certificate of Lawfulness for existing use of land. It is not an application for planning permission. The planning merits of the proposal are therefore not relevant considerations.

Section 191 of the act allows an applicant to ascertain whether any operations which have been carried out in, on, over or under land are lawful. In this case, the applicant seeks to ascertain whether the use of the land as outlined in red on the submitted ordnance survey map is classed as sui generis use for 41 Market Street from its previous use as a residential property is lawful.

Section 55 of the Town and Country Act 1990 provides the definition of development. This section of the act states that development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or land.

Development is stated to include, amongst other things, the following:

- Material changes of use.

Section 171B (3) of the Town and Country Planning Act 1990 states that:

‘In the case of any other breach of planning control no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.’

The starting point is the definition of a HMO (House in Multiple Occupation). The Town & Country Planning (Use Classes) Order 1987 (as amended) sets out the different types of ‘Use Classes’ for land or buildings. It is considered that the definition of a HMO is a property shared by between three and six people who are not from 1 ‘household’ (for example a family) but share facilities like the bathroom and kitchen. This would be classified as use C4 under the current use classes.

Therefore, as the application property is used as an 8-bedroom HMO this falls within the sui generis use class.

There has been a previous certificate of lawfulness application (SMD/2019/0583) which states:

“The property was unoccupied for a period between 2010 and 2013. This has been highlighted by investigating Council Tax records”.

The application was therefore refused as it was not considered that the use of the building has been continuous.

The applicants have submitted five tenancy agreements from different room numbers within the building which have been signed on different dates within 2012/2013 for a term of 6 months. It is noted that the tenancy agreements provided are over differing time periods. However these do not show a consistent occupancy of 6 or more people from the periods between 2010 and 2013. The applicant has failed to demonstrate that at the time of the application No. 41 Market Street had been used as a sui generis use class continuously between the years 2010 and 2013 and therefore, it does not meet the requirements of the Act that the use should have been continuous for ten years at the time of the application.

Given the above, the Local Planning Authority is not satisfied that sufficient evidence has been provided to demonstrate that at the time of the application the land in question had been used for ten or more years in connection with the sui generis use at 41 Market Street. It is therefore not lawful for the purposes of Section 191 of the Town and Country Planning Act 1990.

CONCLUSION

The application seeks a Lawful Development Certificate for an existing use as sui generis use class. The applicant has put forward evidence to state that the property has been used for a period longer than ten years as an 8-bedroom HMO. However, it has not been illustrated by the information submitted that there have been continuously six or more occupants renting rooms within the building between the period 2010 and 2013. As such, it cannot be considered that at the time of the application the use (whatever that use may be) can be considered ‘continuous use’ for a period of ten years or more. Therefore, it is recommended that the certificate is refused.

OFFICER RECOMMENDATION : The lawful development certificate is refused.

Case Officer: Nicole Quinn

Recommendation Date: 13/06/2023

X *B.J. Haywood*

Signed by: Ben Haywood

On behalf of High Peak Borough Council