
Appeal Decision

Site visit made on 12 June 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 6 July 2017

Appeal Ref: APP/B0230/X/17/3168597
67 Meyrick Avenue, Luton LU 5JW

- 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 Shamshad Ali against the decision of Luton Borough Council.
 - The application, Ref 16/01460/LAWP, dated 8 August 2016, was refused by notice dated 18 November 2016.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described by the appellant as the change of use of the property to a house in multiple occupation for up to six persons.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At the site visit the occupier of the first floor flat allowed me and the Council's representative into the building. Neither the appellant nor the agent attended the site visit. It appears the appellant left instructions with the tenants to permit entry into each flat and the occupier of the first floor flat took us to the loft flat after showing us her flat and also introduced us to the ground floor tenants. Whilst in the building the appellant rang to say he was only ten minutes away but by then I had almost completed my site visit and so it was not necessary for him to attend.
 3. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations 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. In any other case they shall refuse the application.
 4. Applying the terms of Section 192(2) of the 1990 Act to the appeal proposal for use as a house in multiple occupation (HMO), the Council has determined the application against the provisions set out in Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
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Reasons

5. The appeal relates to a two storey, semi-detached dwelling with a loft conversion. The building is currently laid out and occupied as three, self-contained flats with a two bedroom flat on the first and second floor and a one bedroom flat within the loft area.
6. The appellant states within his grounds for the application that the existing or last use of the property falls within Use Class C3 Dwelling houses¹. The existing and proposed plans accompanying the application show three flats as existing and a shared house on the proposed layout. Within his grounds of appeal he states that the property has been converted into two flats. His main submission on why a LDC should be granted for the proposal is that the development would be lawful because he did not obtain planning permission before converting the property into flats. The appellant's view is that the lawful use of the building therefore remains as a dwelling house. As such the GPDO permits the change of use to a Class C4 HMO without the need for express planning permission. He wishes to undertake this development as he states he has been 'served' with an enforcement notice (EN) by the Council.
7. Having regard to the appellant's submissions, I consider the use of the property would not benefit from permitted development (PD). This is because Class L limits the change of use of a building to Class C4 from a Class C3 use only. In order to benefit from the PD the appellant needs to demonstrate that the building was either in Class C3 use on the date of the application or that the use of the building for flats has been for less than four years on the date of the application.
8. Although the appellant states that the building was converted into flats without planning permission he provides no information about when these works took place. He also does not explain the discrepancy between the three flats on site at the moment and his reference to two flats within his appeal statement, which may be significant or a simple clerical error. He also fails to demonstrate how long the three flats have been occupied with for example copies of tenancy agreements, Council tax bills or utility bills. Furthermore, he refers to an EN issued by the Council but he does not include a copy with his appeal², even though he was requested to do so, and the Council make no reference to it in their description of the property's planning history.
9. The appellant is responsible for providing sufficient information to support an application³ to demonstrate why the proposal would be lawful. The purpose of the LDC procedure is to arrive at an objective decision based on the best facts and evidence available at the time the decision is taken. In this case, from the limited evidence presented, the appellant has failed to discharge the burden of proof to show, on the balance of probabilities, that the appeal site was either in use or last used as a dwelling house on the date of the application. He has also failed to show that the use of the building as flats has been for less than four years on the date of the application.

Conclusion

¹ Town and Country Planning (Use Classes) Order 1987

² Request for copy of enforcement notice made by The Planning Inspectorate on 23 March 2017

³ Planning Practice Guidance ID:17c-006-20140406

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed change of use of the property to a HMO for up to six persons 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.

D Fleming

INSPECTOR