
Appeal Decision

Site visit made on 9 March 2018

by Katie Peerless Dip Arch RIBA

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

Decision date: 21 March 2018

Appeal Ref: APP/N5090/X/17/3181329

26 Parkside Gardens, East Barnet, Barnet, Herts EN4 8JR

- 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 Mani Hussain against the decision of the Council of the London Borough of Barnet.
 - The application Ref 17/1868/191, dated 22 March 2017, was refused by notice dated 26 June 2017.
 - The application was made under section 191(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 as a House in Multiple Occupation (HMO) for up to 6 people.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the existing use which is considered to be lawful.

Main Issue

2. I consider that the main issue in this case is whether the Council's refusal of the LDC was well-founded or whether the property has been used as a Class C4 House in Multiple Occupation (HMO) for a period that now renders it immune from enforcement action.

The appeal site

3. The appeal site is a terraced house in a row of similar properties in a residential street. It presently contains 5 bedrooms across 3 floors which are rented out to individual tenants. It also contains 2 kitchen areas, one on the ground floor and one on the first floor, and 3 bath or shower rooms, one on each floor. The bedrooms all have individual locks on their doors and double beds but those on the ground and first floors are, apparently, rented to single occupants. The studio room on the top floor has cooking facilities in the room and the tenancy agreements show that it has previously been rented out to couples.

Reasons

4. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) provides for the use of a dwellinghouse as a HMO by not more than 6 residents; that is up to 6 unrelated individuals who share basic amenities.

5. Although the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) grants planning permission under Class L for a change from Use Class C3 (use as a dwellinghouse for up to 6 peoples living as a single household) to Class C4, the Council has, from 29 May 2016, put in force a Direction under Article 4 of the Town and Country Planning Act 1990 (as amended) (TCPA) that removes this permitted development right. Consequently, unless authorised through the passage of time, planning permission would now be needed for the change of use.
6. For the change of use to be authorised through the passage of time, the appellant must show that the use has continued for at least 10 years prior to the date of the application, as set out in s.171B(3) of the TCPA. The relevant period is therefore from 22 March 2007 to 22 March 2017 and if the property was continually in that use for this period, it would subsequently be authorised.
7. The appellant has submitted numerous tenancy agreements relating to the appeal property covering the years up to 2017, beginning in 2006. For each of the relevant years there is evidence of a number of tenants, all with different surnames, living in the house. Although the individual rooms used by each particular tenant are not always identified, there are at least 5 separate occupants identified at any one time, with tenancies of differing lengths, starting and finishing on different dates. From what I saw at my site visit, each room could accommodate a maximum of 2 tenants so, even if there were individuals with different surnames sharing a room, the evidence points to at the house containing at least 5 individuals who would each be unconnected to at least 3 others.
8. It is for the appellant to demonstrate that his version of events is correct and sufficiently precise and unambiguous, on the balance of probabilities. In this case the Council does not appear to dispute the authenticity of the documents and has produced no evidence of its own that makes the evidence produced by the appellant less than probable. The criticism of the appellant's case is limited to the Council's claim that to establish the use, the evidence should demonstrate the use of the property for 6 persons and the agreements must show details of the individual rooms. The Council also refers to the need to demonstrate that there were '*6 unique bedrooms for the duration of 10 years*'.
9. I disagree with this assessment however. A Class 4 HMO is for **up to 6** occupants (my emphasis) who are not living as a single household but sharing facilities for everyday living such as kitchens and bathrooms. Therefore there is no need to demonstrate which tenant was occupying which room, provided it can be shown that the rooms were rented out to unconnected individuals. From the submitted tenancy agreements it seems clear to me that this has been the case at the appeal property for at least 10 years. There is also no requirement even to show that there were 6 bedrooms for the requisite period. All that needs to be established is that there were up to 6 occupants who did not form a household living in the property for at least 10 years, and this I consider has been done.
10. The house also has a licence as an HMO, originally applied for in December 2006 and granted in March 2008. Although this is not definitive in terms of an application for a LDC, it nevertheless supports the appellant's claim that the use applied for has been continuing for a number of years.

11. Therefore, for the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the property as a Class C4 HMO was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Katie Peerless

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on date of application the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use specified in the First Schedule has continued for at least 10 years prior to the date of the application.

Signed

Katie Peerless

Inspector

Date: 21 March 2018

Reference: APP/N5090/X/17/3181329

First Schedule

A House in Multiple Occupation falling within Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended)

Second Schedule

Land at 26 Parkside Gardens, East Barnet, Barnet, Herts EN4 8JR

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.