



Appeal Decision

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 May 2018

Appeal Ref: APP/R5510/X/17/3179364

17a High Street, Yiewsley, West Drayton, UB7 7QG

- 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 Malkit Purewal against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 48484/APP/2017/1074, dated 23 March 2017, was refused by notice dated 5 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 6 bedroom house in multiple occupation.
 - **Summary of decision: appeal allowed**
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Procedural Matter

1. As the appeal depends on the submissions of the parties in respect of matters of law, it is unnecessary to carry out a site visit.

Reasons

2. The Council issued a licence on 13 January 2017 for a house in multiple occupation (HMO) under s64 of the Housing Act 2004 for the appeal property. The house was considered reasonably suitable for occupation by not more than a maximum of 6 households and six persons. The appellant states that the house is currently occupied by six tenants who are named.
3. Although the appellant refers to 6 tenancy agreements accompanying the appeal statement, no such agreements are attached. The appellant says that the tenancy agreements include a provision that does not permit any visitor to stay in the property for a period of more than three weeks within any three month period. Although the appellant considers that a staying guest is entirely different to an additional person residing in the property, I consider it to be significant. It is entirely possible that each tenant could have a visitor staying for three weeks over the same period. This could double the number of occupants and the character of the use would change due to the comings and goings of the occupants. This is a planning judgement which relies on fact and degree of the case but in my view it would go beyond what could be regarded as *de minimis* in the circumstances that the tenancy agreement would provide for. I note also that the HMO licence limits the occupation of the house to 6

persons and is silent on the question of staying visitors. Notwithstanding this, the operation of the tenancy agreement is a private matter and the HMO licence requirements are controlled by the Council through their powers under the Housing Act. I therefore will consider the appeal so far as it relate to matters of planning law.

4. The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 introduced Class C4 for HMOs. The definition is broadly brought into line with that of s.254 of the Housing Act 2004 (as amended). The Town and Country Planning (General Permitted Development) (England) Order 2015 allows as permitted development a change of use from C3 (dwellinghouse) to C4 (HMO for not more than six residents living together as a single household).
5. As the house provides six bedrooms with en-suite shower/toilet facilities and a shared kitchen, this satisfies the requirements of a Class 4 HMO so long as there are no more than 6 residents and the residents live together as a single household. The Council refused the LDC on the basis that the 6 bedrooms constitute double bedrooms and has the potential for more than 6 persons residing in the building. Whilst this may be the case, it is the responsibility of the appellant to ensure that the terms of an LDC are not breached. The Council has the power to take enforcement action in the event that there is a material change in the use of the property and that they consider it is expedient to do so.
6. I am satisfied that on the balance of probability the existing use of the property as a 6 person HMO is lawful.

Conclusion

7. 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 6 bedroom house in multiple occupation 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.

Decision

8. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

P N Jarratt

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 23 March 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black on the plan attached to this certificate, 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 of the property as a house in multiple occupation is permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 which allows a change of use from C3 (dwellinghouse) to C4 (HMO) for not more than six residents living together as a single household.

Signed

P N Jarratt

Inspector

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First Schedule

Use of property as a 6 bedroom house in multiple occupation for not more than six residents living together as a single household.

Second Schedule

Land at 17a High Street, Yiewsley, West Drayton, UB7 7QG.

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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 02 May 2018

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Land at 17a High Street, Yiewsley, West Drayton, UB7 7QG

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Scale: Do not scale

