
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/17/3179362
10 Greatfields Drive, Uxbridge, UB8 3QN

- 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 M Purewal against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 72815/APP/2017/1577, dated 2 May 2017, was refused by notice dated 22 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 the use of dwelling as a 6 bedroom house in multiple occupation.
 - **Summary of decision: appeal dismissed.**
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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 appellant states that the building was already in use as a 6 bedroom HMO prior to the Article 4 Direction imposed by the Council in March 2013 which removed permitted development rights for changes of use to 3-6 person HMOs.
3. 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 use class is not retrospective and therefore HMOs with an existing use as such before 6 April 2010 were not affected by the change in legislation.
4. The Town and Country Planning (General Permitted Development) Order 1995¹ (as amended) allowed 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). However the Council introduced an Article 4(1) Direction under the 1995 GPDO which came into force on 24th March 2013 and this removed permitted development rights for changes of use to 3-6 person HMOs in certain wards of the Borough, including the appeal property.

¹ Now superseded by the Town and Country Planning (General Permitted Development) (England) Order 2015

5. Article 4 (2) of the 1995 Order (as amended) provides that the Direction would not affect the carrying out of permitted development within specified classes before the Direction comes into force. However the relevant permitted development right in this case relates to the change of use from C3 to C4. The appellant states that the building was a student HMO from September 1997 which he claims was being lawfully used as a 6 person HMO prior to the introduction of the Order. In such circumstances, however, permitted development rights would not apply irrespective of the Council's Article 4 Direction as no apparent change of use took place, with the premises being in the same HMO use. Whether the use as an HMO is lawful therefore needs to satisfy the time limitation set out in s171B (3) which states that no enforcement action may be taken after the end of a period of ten years beginning with the date of the breach. The use must also have continued throughout this period.
6. Although the appellant claims that the property has been used as an HMO since 1997, no evidence has been submitted to support this, or that the use has continued for ten years or more. The appellant refers to an email from a Senior Housing Surveyor for HMO Licensing at the Council dated 16 November 2016. Although very briefly stated, the officer confirms that the property was in HMO use before March 2013, but does not state when the use commenced. Additionally no reference is made to any HMO licence before that date although the appellant has submitted details of a licence issued on 9 December 2016 for a house in multiple occupation under s64 of the Housing Act 2004 for the appeal property. This states that the house is considered reasonably suitable for occupation by not more than a maximum of 6 households and six persons. However this 2016 licence does not provide evidence of when the change of use took place. The Council's appeal statement does not address the confirmation of the HMO use by the Senior Housing Surveyor.
7. The Council refused the LDC on the basis that the appellant had not demonstrated that the use had existed and continued for a period of 10 years prior to the application, which was one of the grounds upon which the LDC application was made (the other being that the use of a 6 person HMO constitutes permitted development).
8. The Council also concerns itself with the possibility that the 6 bedrooms could accommodate up to 12 people. 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. 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 take such action.
9. In the absence of any documentary or other evidence relating the commencement of an HMO use, the appellant has not demonstrated on the balance of probability that the use of the property as a 6 person HMO has subsisted for ten years prior to the date of the application. Furthermore, according to the appellant's own submissions, the use before and after the introduction of the C4 use class was as an HMO and consequently the permitted development right to change from C3 to C4 cannot have occurred.

Conclusion

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 use of the property as a 6 bedroom house in multiple occupation 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.

Decision

11. The appeal is dismissed.

P N Jarratt

Inspector

