
Appeal Decision

Site visit made on 1 May 2018

by A A Phillips BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2018

Appeal Ref: APP/U5930/X/17/3180137

34 Stow Crescent, Walthamstow E17 5EG

- 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 Anjum Shahzad against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 170968, dated 16 March 2017, was refused by notice dated 11 May 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 use as a house in multiple occupation (C4).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to issue the certificate of lawfulness was well founded. That turns on whether the appellant can show, on the balance of probability, that the change of use to a C4 house in multiple occupation (small HMO) occurred prior to 16 September 2014 when the London Borough of Waltham Forest introduced an Article 4 Direction which removed permitted development rights for a material change of use from a C3 (dwellinghouse) to a C4 (houses in multiple occupation (3 to 6 persons)).

Reasons

3. With the appeal form the appellant has submitted a range of documentation, which includes the following:
 - Drawings – Pre-Existing and Existing dated 24 June 2016;
 - Shorthold Tenancy Agreements;
 - Letting Management Agreements;
 - Bank Statements;
 - Tenant's invoices;
 - Section 48 Notices;
 - Signed letters from tenants or previous tenants;

- Correspondence between the appellant and tenants; and
 - Correspondence between the appellant and letting agents.
4. In an appeal relating to a lawful development certificate the burden of proving the relevant facts rests with the appellant, and the test of the evidence is the balance of probability. The appellant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
 5. In this particular case no statutory declaration or witness statement has been provided to explain the history of the occupation of the appeal site. Although there are no plans attached to them it is clear that the tenancy agreements and lettings management agreements relate to 34 Stow Crescent.
 6. There is inconsistency in terms of the reference to rooms to which the agreements relate – some refer to particular rooms or units within No 34 such as '34C', 'Room B' and 'second floor rooms 5 and 6' whilst others reference a particular floor or have no reference to any particular room or unit. The lettings management agreement between the appellant and Sarah Properties dated 1 September 2014 makes specific reference to self-contained flats at the property. The tenancy agreements do not identify the use of shared facilities. Consequently, this evidence casts doubt over the type of accommodation that was provided at the property at the time.
 7. The drawings dated 24 June 2016 submitted with the appeal which show pre-existing and existing plans show how the property existed as a four storey six bedroom single family dwelling and then as a property comprising the following:
 - Ground floor 1 person bedsit. Bathroom, kitchen/dining room and living space;
 - Two first floor self-contained 1 person bedsits each with their own kitchen/cooking area and bathroom/shower;
 - Two second floor self-contained 1 person bedsits; one with its own kitchen/cooking area and bathroom/shower and the other with its own bathroom/shower but no kitchen/cooking area shown; and
 - Loft space comprising living space and store area.
 8. It is unclear from the layout plans that the property operated as a small HMO with people sharing basic amenities. The layout shown on 1945 L 003 (Plans as Existing) appears to show some shared kitchen/dining and living space at ground floor and living space in the loft although it is not entirely clear how these spaces would be used and how they relate to the self-contained nature of some of the units. The plans alone provide insufficient evidence that the property operated as a small HMO before 16 September 2014. Evidence submitted also suggests that a sixth bedroom is included within the site which is not consistent with the plans submitted with the appeal documentation.
 9. The tenancy agreements cover the period between 31 August 2014 and 1 May 2017. However, it is noteworthy that the vast majority of the agreements

cover the period between June 2015 and May 2017 which is clearly after 16 September 2014. Evidence which pre-dates 16 September 2014 includes a letting management agreement between the letting agent and the appellant dated 1 September 2014 for the rental of the property for the sum of £3,750 per month which is a sum also shown on a bank statement. There is correspondence between the appellant and the lettings agent dated 4 September 2014 confirming payment to the landlord and another bank statement showing the payment to the appellant of the sum of £3,750. This is evidence that the property may have been let and that financial transactions did occur between the appellant and lettings agent, but is not evidence of HMO use prior to 16 September 2014. Furthermore, there is insufficient evidence of how the rental sums per room or unit correspond to the total property rental sum of £3,750. As such there is little clear demonstration that the rooms were let out separately before 16 September 2014.

10. Also, the correspondence between the appellant and tenants and the Section 48 notifications to tenants date from February 2016. Therefore, this is insufficient evidence to prove use as an HMO before the stated period.
11. There is an invoice from a previous tenant which indicates that he moved into the property with his family on 31 August 2014 and a receipt that rental of the property was paid on 2 February 2016. The same tenant has provided a letter which states that he lived in second floor rooms 1 and 2 with his wife and daughter from 31 August 2014. The letter also appears to state that at the time of taking the tenancy some other rooms at ground and first floor were let individually. This is not a statutory declaration and although it indicates occupancy of two rooms by a family and occupation of rooms by others I attach little weight to this in terms of proving on the balance of probability HMO use on a continuous basis.
12. The appellant states that he does not have details of those who occupied the property on 1 September 2014 as the letting agents were managing the property at the time and the letting agent did not keep records of those tenants. I accept that long term occupants may have been paying £1,400 per month and that the appellant may have been receiving a total income from the property of £3,750 per month. However, this does not prove that the property was occupied as a small HMO for the period on or before 16 September 2014. The burden of proof is on the appellant and in this case the evidence for the period before 16 September 2014 is not sufficient to demonstrate the appellant's case and there is some ambiguity in the evidence of occupancy presented for the period since that date.
13. The Council has stated that Council Tax records independently checked failed to provide sufficient evidence that the property has been in use as a house in multiple occupation prior to 16 September 2014 or continuously over the past four years. Indeed, the Council's own Revenue Services has provided evidence that the property has been registered as a single family dwelling house.
14. Taking all these matters into account, therefore, my conclusion is that the appellant has failed to show on the evidence now before me, on the balance of probability, that the change of use to a house in multiple occupation occurred prior to 16 September 2014, so as to be immune from enforcement.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect to use of the property at 34 Stow Crescent as a C4 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.

Alastair Phillips

INSPECTOR