



Appeal Decision

Site visit made on 13 August 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2019

Appeal Ref: APP/B4215/X/18/3214391 70 Kingswood Road, Manchester M14 6RX

- 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 J Pryers against the decision of Manchester City Council.
- The application Ref 120645/LE/2018, dated 12 July 2018, was refused by notice dated 6 September 2018.
- 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 a C4 HMO.

Summary of Decision: The appeal is dismissed.

Applications for costs

1. An application for costs has been made by Manchester City Council against Mr J Pryers. This application is the subject of a separate decision.

Main Issue

2. The main issue is whether the Council's refusal to grant a certificate of lawful use was well-founded. In this particular case this turns on whether the appellant has proved on the balance of probability that the use of the property changed to a C4 house in multiple occupation on or before 8 October 2011.

Reasons

3. The appeal property is a two storey semi-detached residential property which is situated in a predominantly residential part of Manchester. It has a single storey rear extension across the full width of the rear of the property and a large porch on the front. It occupies an irregular shaped plot and has gardens areas to the front and rear. At the time of my site visit the property had six bedrooms with an entrance hall, small ground floor shower room with sink and toilet, communal kitchen / living area and a first floor bathroom with sink and toilet.
4. On 8 October 2011 the Council adopted an Article 4 Direction removing the permitted change from Class C3 (dwellinghouses) to Class C4.(houses in multiple occupation). The application the subject of the current appeal was submitted in July 2018 stating that the use as a single dwellinghouse began more than four years before the date of the application. The evidence submitted with the application shows there to be six tenants in the property each year.

5. It is my understanding that during the application process the Council requested additional evidence that would cover the period prior to 8 October 2011 (the date when the Article 4 Direction was adopted) to June 2014; however, the appellant declined to submit additional evidence on the basis that the four year immunity period applied to this application.
6. In an appeal relating to a lawful development certificate the onus of proving the relevant facts rests with the appellant, and the standard of evidence is the balance of probabilities. 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.
7. The appellant contends that the introduction of the Article 4 Direction does not change primary legislation with respect to immunity periods and I do not disagree with this point. For the purposes of clarification, a certificate of lawfulness for an existing HMO would be required to show that either existed before the Article 4 Direction was introduced or that the change of use occurred after the Article 4 Direction was introduced but the period during which the Council could take enforcement action has expired. Section 171B of the Act states that where there has been a breach of planning control with respect to the change of use of any building to use as a single dwellinghouse no enforcement action can take place after the end of a period of four years beginning with the date of the breach (s171B(2)). In the case of any other breach of planning control no enforcement action may be taken after the period of ten years beginning with the date of the breach (s171B(3)).
8. Class C4 of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 introduced the C4 Use Class which relates to HMOs being a form of dwellinghouse, stating very clearly that Class C4 - houses in multiple occupation constitute the use of a dwellinghouse by not more than six residents as a house in multiple occupation.
9. It is clear to me from the evidence presented that the appeal property is a dwellinghouse, but the key issue of dispute between the main parties is whether a change of use has occurred to use as a single dwellinghouse so as to benefit from s171B(2) of the Act. The courts have held¹ that a dwellinghouse is defined by its ability to afford those who use it, the facilities required for day to day private domestic existence. That definition includes HMOs which are dwellinghouses for the purposes of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
10. The Council's argument is that since the introduction of the Article 4 Direction the change of use from a Class C3 dwellinghouse to a small HMO for not more than six residents requires planning permission. A C4 use is also quite clearly a form of dwellinghouse. However, that change of use between C3 and C4 does not include the change of use of any building to use as a single dwellinghouse as no single dwelling has been created that did not previously exist. As such, a change of use does not benefit from the four year immunity period under s171B(2) of the Act. Instead the appellant in this case needs to therefore demonstrate that the use of the property as a small HMO has taken place for a

¹ *Gravesham BC v SSE* (1982) 47 P & CR 142 [1983] JPL 307

period of ten years under s171B(3) or that it existed prior to the date the Article 4 was introduced, which is 8 October 2011.

11. The appellant's evidence shows that the property has been occupied as a small HMO for at least four years up to the date of the application. However, the demonstration of four years continuous use as a dwellinghouse in multiple occupation is insufficient for a lawful development certificate to be issued in this case in these particular set of circumstances.
12. In coming to this decision I have taken account of the evidence submitted by the appellant and the Council and also relevant case law and appeal decisions to which my attention has been drawn.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single dwellinghouse 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.

A A Phillips

INSPECTOR