



Appeal Decision

Site visit made on 29 May 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2019

Appeal Ref: APP/D1780/X/18/3217660

104 Bernard Street, Southampton SO14 3EH

- 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 Neil Moores of Templeton Stockbridge Limited against the decision of Southampton City Council.
 - The application Ref 17/01599/ELDC, dated 13 September 2017, was refused by notice dated 6 June 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 described on the application form as "*lawful use as a house under multiple occupation (HMO)*".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant made it clear that an LDC was sought in respect of an existing use of the appeal property as a small house in multiple occupation (HMO) within Class C4 of the Town and Country Planning (Use Classes) Order (as amended) (UCO). The Council determined the application on that basis and I shall deal with the appeal accordingly.
3. The Council's decision notice is headed "Refusal of a Certificate of Lawful Use or Development". The decision notice provides a reason for refusal and the explanatory notes refer to the use applied for as not being lawful. Therefore, whilst the first paragraph purports to certify that the use applied for was lawful, when read as a whole it is clear that the application was in fact refused by the Council. As the appellant was able to make a valid appeal, he has not been prejudiced by any difference between the date of the decision notice and that shown on the Council's website. Therefore, these matters do not indicate that the above document is not a decision notice. In any event, if that had been the case the Council would then have not determined the application, meaning that I would still have an appeal before me.

Main Issue

4. The main issue in this appeal is whether the available evidence demonstrates that the existing lawful use of the property is as an HMO by up to six persons within Class C4.

Reasons

5. The onus is on the appellant to show that an LDC should be issued, the relevant test of the evidence being on the balance of probability.
6. The property contains a mid-terrace building erected as a dwelling. The factual evidence supplied sought to show that the property had been used as an HMO by up to six people since at least 1 November 1997 until the application date. The evidence included Statutory Declarations from the current and previous owners and a director of a property management company. Copies of HMO Licence certificates and records for the period 12 December 2007 to 1 May 2018 and unsigned copies of tenancy agreements dating between 28 July 2000 and 22 July 2014 were also supplied.
7. Residential accommodation at the property is arranged over three floor levels. During my site visit, I noted that on the ground floor there were two, one-bedroom units of accommodation, with two similar units on the first floor. These four units (units 1-4) each had their own individual private kitchen and bathroom facilities. There was also a fifth unit on the first floor (unit 5) consisting of a single bedroom. On the second floor, there was a communal kitchen, bathroom and lounge area. The second floor could be accessed from each unit via a communal hallway. I understand that the current property layout and facilities available in respect of each unit dates from April 2016.
8. Class C4 provides for use of a dwellinghouse by not more than six residents as an HMO. For the purposes of Class C4 an HMO has a similar meaning as that set out in s254 of the Housing Act 2004, which refers *inter alia* to the living accommodation being occupied by persons who do not form a single household. Meeting the s254 definition of an HMO is reliant on satisfying tests, which include the building containing one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats). However, the UCO also makes it clear that a Class C4 HMO does not include a converted block of flats to which s257 of the 2004 Act applies. Therefore, where a building or part of a building has been converted into and consists of self-contained flats the use cannot fall within Class C4, regardless of whether the tests in s254 are otherwise satisfied.
9. The communal facilities at the property notwithstanding, the kitchen and bathroom facilities in units 1-4 mean that each of those units is able to afford their occupiers the facilities required for day-to-day private domestic existence, this being the distinctive characteristic of a dwellinghouse set out in established case law¹. Consequently, as a matter of fact and degree units 1-4 each exhibit physical and functional separation from the rest of the property and on the balance of probabilities, they each comprise a separate residential planning unit. Moreover, units 1-4 each satisfy the definition of a self-contained flat in s254; the appellant did not seek to argue otherwise. I acknowledge that the other unit (unit 5) does not meet the s254 definition of a self-contained flat, as the occupiers have to rely on the communal facilities on the second floor for basic amenities. Therefore, a part of the property has the characteristics of an HMO use. Nevertheless, the presence of self-contained flats at the property has the effect of excluding the existing use from Class C4.

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142.

10. Therefore, I find that on the balance of probability the available evidence suggests that the existing use of the property is as a mixed use as flats and an HMO, a *sui generis* use and not as a Class C4 HMO.
11. Given the above findings, detailed assessment of the factual evidence submitted regarding the use of the property from November 1997 onwards is not necessary. Even if there had previously been a subsisting lawful use of the property as a Class C4 HMO, that use would have been superseded by the material change of use to a mixed use, which more likely than not occurred around April 2016. Therefore, an LDC cannot be issued in the terms applied for in any event.

Conclusion

12. 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 an HMO within Class C4 was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under Section 195(3) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR