The Planning Inspectorate

Appeal Decision

Site visit made on 12 November 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Appeal Ref: APP/J4525/X/19/3225571
24 Park Place West, Sunderland SR2 8HT

- 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 Kevin Shaw, BedeBrooke Property Sales and Lettings, against the decision of Sunderland City Council.
- The application Ref 18/01843/CLE, dated 2 October 2018, was refused by notice dated 4 March 2019.
- 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 of the property as a 6-person 'small HMO' falling within Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

Decision

1. The appeal is dismissed.

Background

2. The Council previously enforced against the use of the property as a large house in multiple occupation (HMO). The enforcement notice was subsequently upheld in August 2018, following an appeal[1].

3. There was no dispute that the property was, at that time, being used as an HMO for up to seven residents.

4. The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 (UCO) sets out, amongst other things, to distinguish between dwellinghouses and houses in multiple occupation as follows:

   Class C3. Dwellinghouses: Use as a dwellinghouse (whether or not as a sole or main residence) by — (including) (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

   Class C4. Houses in multiple occupation: Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

5. Section 254 of the Housing Act 2004 sets out the criteria to be met if a building or a part of a building is an HMO. The criteria include that it must consist of

[1] Appeal Refs: APP/J4525/C/18/3193530 & APP/J4525/C/18/3193531

one or more units of living accommodation not consisting of a self-contained flat or flats and that two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities. "Basic amenities" is defined as a toilet, personal washing facilities or cooking facilities.

6. Where an HMO accommodates more than six residents it falls outside any specified class of use within the UCO. In such circumstances it would be regarded as a 'sui generis' use.

7. The change of use from a single dwelling (Use Class C3) to an HMO for up to six residents (Use Class C4) is normally permitted development under the terms of Schedule 2 Part 3 Class L of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). This permitted development right was first introduced through an amendment to the previous version of the GPDO[2], which came into effect on 1 October 2010[3]. Before this time the material change of use from a dwelling to an HMO would have constituted development requiring planning permission.

Reasons

8. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development or because the time for enforcement action has expired (s191(2)). In this case, the appellant seeks to argue that development has not occurred.

9. The appellant's case is that the use of the property as a smaller HMO, falling within Use Class C4, is in fact the lawful use of the property. Copies of extracts of tenancy agreements have been provided, indicating that the property was occupied by three unrelated students between February and August 2008. The appellant has also produced a statutory declaration stating that the property was let to six unrelated students between September 2011 and August 2012, since when the property has been let to groups of either six or seven unrelated students every year.

10. The appellant accepts that the use of the property by seven unrelated individuals would have been unlawful. However he says that the reclassification of Use Class C3 in 2010, automatically bringing a property previously falling within that Use Class into the new Use Class C4, as in the case of the appeal site, would have amounted to a lawful material change of use. He concludes that this means the property could lawfully be used and occupied as such, that is by up to six residents living as separate households.

11. However it is apparent from the appellant's submissions that the property has been occupied by various unrelated individuals since February 2008. The occupation of the property by students, independently of one another, is likely in my view, to have resulted in a greater overall variation in movement patterns and fewer linked trips, than if the dwelling was occupied by a single family. Furthermore it is likely that there would have been an increase in the overall number of visitors due to the unrelated identities of the occupiers. This would have given rise to increased comings and goings to and from the property.

[2] The Town and Country Planning (General Permitted Development) Order 1995.
[3] The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010.

12. I am not therefore persuaded that the property continued to be occupied as a single household, within Use Class C3 after February 2008, and that there had not been a material change of use from a dwelling to an HMO. Therefore, whilst I have no reason to doubt the information provided in the statutory declaration, the aforementioned reclassification of Uses in 2010 would not overcome a prior unlawful material change of use from dwelling to HMO. The fact that it was unlawful does not mean that there was not a material change of use. Furthermore the GPDO does not grant planning permission retrospectively.

13. It is undisputed that the Council made an Article 4 Direction which came into effect on 16 December 2013, the effect of which was to remove the permitted development right set out in Schedule 2 Part 3 Class L, in relation to various residential properties in the City. Notwithstanding that the HMO use would appear to have already been in place at this time, for the above reason I am not persuaded that it was lawfully implemented.

14. The appellant has referred to licenses granted by the Council in 2008 and 2014 for the use of the property as an HMO. This however relates to a separate consenting regime and does not have a bearing on my assessment in this case.

15. Therefore for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Use of the property as a 6 person 'small HMO' falling within Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) at 24 Park Place West, Sunderland SR2 8HT 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.

Roy Merrett

INSPECTOR