



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/19/3228819

The Rectory, Well Bank Road, Washington NE37 1NW

- 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 Ms Helen Goudie against the decision of Sunderland City Council.
 - The application Ref 19/00215/CLP, dated 1 February 2019, was refused by notice dated 10 April 2019.
 - The application was made under section 192(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 "Proposed Use of part of the Rectory for short term lettings (C3)"
-

Decision

1. The appeal is dismissed.

Background

2. The Council previously served an enforcement notice against development at the property comprising change to a mixed use of beauty salon and a dwelling for short term lettings including holiday lettings. The notice was upheld following an appeal¹.
3. In that appeal, regard was had to previous case law which dealt with the question of whether a change of use of a dwelling to commercial leisure accommodation had occurred². The Inspector in the *Moore* case applied various criteria to test the proposition, including the pattern of arrivals and departures; traffic movements; the unlikelihood of occupation by family or household groups; the number of guests and the likely frequency of 'party type activities' and the potential lack of consideration for neighbours. The Court of Appeal held that whether there was a material change of use would depend upon the specific circumstances of the case.
4. With regard to the current appeal site, it was previously concluded that the development, when considering the relatively high visitor capacity, the novel characteristics of the internal design, being adjoined to the beauty salon, and the undisputed marketing of the property as the 'Escape hot tub house', would

¹ Appeal Refs: APP/J4525/C/18/3196185 and APP/J4525/W/18/3196183

² *Moore v SSCLG & Suffolk Coastal DC* [2012] EWCA Civ 2101

be more likely to appeal to groups of people seeking to gather socially rather than to individual families or households. The occurrence of party and celebratory type activities would not be inevitable, but a highly likely objective and outcome from such gatherings, occurring far more commonly when compared to the property being occupied on a permanent basis. It was therefore concluded that, because of the scale and nature of letting, the use of the property would be materially different from a dwelling.

5. It was further concluded that given the likelihood of celebratory events taking place at the property and its proximity to nearby residents, that the development would likely result in harm to the living conditions of those residents, with particular regard to noise disturbance. Accordingly it would not be appropriate to grant planning permission for the proposed use.
6. In terms of this appeal, I noted from my visit that an adjoining unit continues to be used as a beauty salon and also that the external parts of the property consist of terraced and patio areas with outdoor hot tub and seating provision.

Reasons

7. In order for an LDC to be granted under s192 of the Act, it is necessary for the appellant to show, on the balance of probabilities, that the development would have been lawful at the date of the application. Specifically in this case it would be necessary to show that the development would not constitute a material change of use.
8. The appellant has set out that it is proposed to let the property on a different basis compared to how it was let previously. This would include specifically marketing it for use by family and friends, with an emphasis on attractions in the local area; specifically advertising the property as not suitable for celebratory events, including parties and forthcoming weddings, and limiting the capacity to a maximum of six guests with check-in time restricted to between 2pm and 5pm. The appellant says that it is no longer proposed that the existing external hot tub area be used as part of the holiday let (though at application stage the proposal was simply that this area would be enclosed). They say that the proposed use would more likely be akin to a four-bedroom dwelling, characterised by family or single household occupation.
9. The proposal would feature domestic accommodation where, in practice, guests would have ready access to beauty treatment within the adjoining unit. Furthermore, despite the statement that the hot tub would be excluded from the let, the facility remains in place and immediately accessible at the rear of the property. Although not specifically part of this application, it was previously found that the enclosure of the hot tub area would not be sufficient to attenuate noise and in any event other seating areas would remain open.
10. It seems to me that the potential availability of the adjoining beauty salon, the hot tub facility and the external seating would continue to be attractive to and therefore likely to be frequented by groups of visitors seeking to gather for a celebration. Despite the physical layout of the property as a 4-bedroom dwelling, I have not been provided with any compelling evidence that satisfactory control could be exercised over the nature of the use to prevent the likelihood of regular short-term celebratory gatherings from happening and associated frequent disturbances arising, when also taking account of the proximity of neighbouring residents.

11. Whilst I sympathise with the appellant's business aspirations and note the intention to market the property differently, I am not persuaded this would be sufficient to ensure the concerns which led to the previous enforcement notice being upheld, on the basis of the use being distinguished from a dwelling in use class C3, would be overcome. Given the circumstances of this case, I consider that the proposal would result in a material change of use, even if the capacity was restricted to a maximum of six residents at any one time.
12. I conclude that the proposed development would, given the circumstances of this particular case, fall outside the C3 Use Class and would therefore constitute a material change of use of the property. As such it would also conflict with the enforcement notice in place on the property. 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 "Proposed Use of part of the Rectory for short term lettings (C3)" at The Rectory, Well Bank Road, Washington NE37 1NW 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