



Appeal Decision

Site visit made on 3 December 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2020

Appeal Ref: APP/A5270/X/18/3216889

7 Towers Road, Southall UB1 2HU

- 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 Allerton Group against the decision of the Council of the London Borough of Ealing.
- The application Ref 184128CPL, dated 23 July 2018, was refused by notice dated 18 October 2018.
- 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 a C4 small house in multiple occupation (HMO).

Summary of Decision: The appeal is dismissed.

Procedural Matter

1. I have taken the description of the proposal from the application form, rather than the description used by the Council, because that is the proposal for which the lawful development certificate is being sought.

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 use falls within Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended). If the proposed use is deemed to fall within Class C4 it would be permitted development under Class L, of Schedule 2, Part 3, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

3. The appeal property is a three storey residential house and its associated domestic curtilage which includes a converted single storey outbuilding. It is situated in a predominantly residential area. The proposal is to occupy the property as a C4 small HMO which the appellant considers is permitted development.
4. Under the terms of Class L, of Schedule 2, Part 3 of the GPDO the change of use from small HMOs to dwellinghouses and vice versa is permitted development. It is important to note here that a lawful development certificate is not a planning permission, but rather its purpose is to enable land owners and others to determine whether particular uses, operations or other activities

are or would be lawful. In the case of this application under s192 of the Act the test is whether or not the use would be lawful. The burden of proof rests with the applicant and the relevant test of the evidence is the balance of probability.

5. The evidence presented shows that the proposed C4 use would follow the refurbishment of the property as shown on the submitted plans and as a matter of law the application made pursuant to s192 of the Act must be determined in accordance with whether the proposed use on the date of the application was permissible under the terms of the GPDO. It should be determined entirely on the basis of factual evidence and planning merits are not relevant.
6. The GPDO provides for a material change of use to a HMO up to a maximum of six person occupancy only. In this case the proposed occupancy is for seven at any one time. The appellant argues that the application was submitted to the Council to confirm whether the proposed use for no more occupants than was already practicable as an extended family would not require a formal application for planning permission. It is contended that although the total number of occupants of the property would be no more than seven, there would be no apparent material difference in the level of activity and apparent use compared to its original use as a single dwellinghouse. However, that is not the test for whether the proposal meets the requirements of the GPDO.
7. The proposed level of occupancy of the property for seven people exceeds the occupancy levels under which a C4 HMO falls. Consequently, it cannot be reasonably argued that the proposed change of use from a dwellinghouse to a small C4 HMO falls as permitted development under the terms of Class L, of Schedule 2, Part 3 of the GPDO.
8. In addition, the annex in the garden provides an additional bedroom within a self-contained residential unit, independent from the main house. It is clear to me that this development falls outside the definition of development for which the certificate is sought and, since it is located within the application site, it is an additional reason to conclude that the certificate should be refused.

Conclusion

9. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use in respect of the use as an HMO for seven persons 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