



Appeal Decision

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 March 2020

Appeal Ref: APP/X1165/X/19/3237544

8 Madrepore Road, Torquay, TQ1 1EY

- 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 Mrs Cathy Alford against the decision of Torbay Council.
 - The application dated 25 March 2019, Ref P/2019/0328/CE, was refused by notice dated 9 July 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 as a House in Multiple Occupation (HMO) for 9 persons.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For the avoidance of doubt, I should explain that the planning merits of the use are not relevant, nor are the financial circumstances of the appellant, and they are not therefore issues for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
3. A site inspection was unnecessary in view of the determination of the case being dependent on the facts.

Reasons

4. In order to establish a lawful use for a 9 person HMO, it is necessary to show that the property has been in that use before the date of the application for a period of 10 years beginning with the date of the breach (s171B(3)). In this case the relevant date is 25 March 2009. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.
5. The appeal property is a three storey end-terrace property which the joint owner, Paul Alford, indicates in a statutory declaration, was purchased as a licensed HMO for 9 persons on 1st February 2013 and has been operated as such since that time.

6. A statutory declaration by Stephen Lofthouse, a director of Bettesworths Ltd, estate agents, indicates that a sale of the property to a Dr Dodd was completed on 6 August 2009 and sold to Mr and Mrs Alford on 1st February 2013.
7. The appellant states that the property usually had 7-9 tenants in occupation although 8 rooms were occupied when Mrs Alford inspected the property at the time of purchase. Dr Dodd had purchased the property in 2009 when it was an HMO for seven persons with the two additional rooms at the time used as lounges. Since the appellant acquired the property, tenancy has ranged from 75-100%. The submitted tenancy schedule sets out the names, occupation, the dates the tenant moved in and out and whether a contract had been submitted, for all 9 rooms. The earliest date shown is for room 7 which was occupied by an inherited tenant from 26 October 2005. All other dates referred to are for 2011 or later.
8. A statement by John Glasper confirms he has lived in the property since May 2011 and that the house has 9 single letting rooms which have been let out consistently.
9. A copy of the sales details of the property dated January 2008 clearly indicates that the property had seven letting bedrooms with communal facilities but that the lounge and second kitchen were not then used but had potential to provide further letting accommodation. A mortgage valuation report dated 14 May 2009 refers to 7 lettable bedrooms which is after the relevant date of 25th March 2009.
10. Copies of three HMO licences have been submitted which relate to licenses for 9 rooms with single person occupancy for 5 years from 14 October 2010 and the periods 25 March 2013 to 24 March 2018 and 25 March 2018 to 24 March 2023. However, the date of the first licence post-dates the relevant date. Additionally, an HMO licence is issued under the Housing Act and is separate to the need to obtain planning permission.
11. There will be periods when some rooms may not be occupied due to a change in tenant and in general terms this would be de minimis and not be significant in terms of showing continuity in the use of the property. However, the appellant has not been able to provide evidence to indicate that the change of use occurred before 25 March 2009 and cannot therefore establish on the balance of probabilities that the use has become lawful and immune from enforcement action. Indeed, the agent's declaration in the application for an LDC that the use as an HMO for 9 persons has continuously existed since at least 2005 is not borne out by the evidence submitted.

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 use as a House in Multiple Occupation (HMO) for 9 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.

P N Jarratt

Inspector