



Appeal Decision

Site visit made on 25 February 2020

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2020

Appeal Ref: APP/Q3060/X/19/3228639
12 Waterloo Road, Nottingham NG7 4AU

- 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 Student Property Investments Ltd (Mr D Kale) against the decision of City of Nottingham Council.
 - The application Ref 19/00407/PCLO, dated 22 February 2019, was refused by notice dated 24 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 described as, 'to increase an eight bed house in multiple occupation to a ten bed house in multiple occupation'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Procedural Matter

2. The appellant's proposal is described in terms of the change that is sought. However, a certificate granted under s192 needs to specify the use rather than the change that would lead to it. I have therefore considered the appeal on the basis that the appellant seeks a certificate for use of the property as a house in multiple occupation for up to 10 residents.

Main Issue

3. The main issue is whether the increase in the number of occupants of the property to 10 would amount to a material change in its use.

Reasons

4. The starting point is the existing use of the property. There is no dispute about this. Both parties refer to it as a house in multiple occupation (HMO) for 8 people. Moreover, the appellant has provided evidence to support this. This includes tenancy agreements for several consecutive years, the most recent being 2018-19. All of these show 8 tenants at the property. Other documents, including room inventories and account statements, indicate occupation by 8 tenants for at least 10 years prior to the date of the LDC application, and there is no evidence before me to suggest otherwise. I therefore conclude that the

property was lawfully used as an HMO occupied by 8 people on the date the application was made.

5. An HMO occupied by more than 6 people does not fall within any use class defined by the Town and Country Planning (Use Classes) Order 1987 (as amended). Given the clarity regarding the existing use, the determination in this case hinges on whether increasing the number of occupants from 8 to 10 would, as a matter of fact and degree, amount to a material change in the use of the property.
6. As the Council correctly states, the proposal would amount to a 25% increase in the number of occupants, and this would necessitate internal alterations. It is common ground that these works do not, in themselves, require planning permission. While they would enable the increased number of tenants the appellant seeks, they would not change the overall nature of the building or its effect on the locality. It may also be, as the appellant suggests, that significant works would be carried out even if there were no change in the number of tenants, in order to improve the accommodation and provide en suite facilities. While I cannot be sure of this, I accept that internal alterations are not always linked to a change of use. Overall, the internal changes proposed here do not show that the increase in occupancy would be material.
7. The increase in occupation of the property would lead to an increase in movements to and from it and the refuse generated there. There might also be a commensurate increase in any noise arising from the property and the number of cars associated with it, and I am mindful of the limited parking available at the property and nearby. However, considered in the context of the level of activity associated with its occupation by 8 people, such increases would not materially change the character of the property or the effect of the use on neighbouring property, including its semi-detached neighbour.
8. The Council refers to an increase in anti-social behaviour, but I have no evidence of any existing antisocial behaviour or anything to show that antisocial behaviour would be likely as a result of the increased occupation of the property. Having regard to the size of the building and the submitted layout plans, I do not consider that the increase proposed amounts to an over-intensive use of the property.
9. Overall, with the above points in mind, I find that the increase in the occupation of the property from 8 to 10 people would not materially affect the character of the property or its effect on neighbours and the locality. Accordingly, the change proposed does not amount to a material change of use of the property.
10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development to 'increase an eight bed house in multiple occupation to a ten bed house in multiple occupation' was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Peter Willows

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 22 February 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On 22 February 2019 the building was lawfully used as a house in multiple occupation occupied by 8 residents. An increase in the number of residents from 8 to 10 would not materially change the use of the property.

Signed

Peter Willows

Inspector

Date: 16 March 2020

Reference: APP/Q3060/X/19/3228639

First Schedule

House in multiple occupation for up to 10 residents.

Second Schedule

Land at 12 Waterloo Road, Nottingham NG7 4AU

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

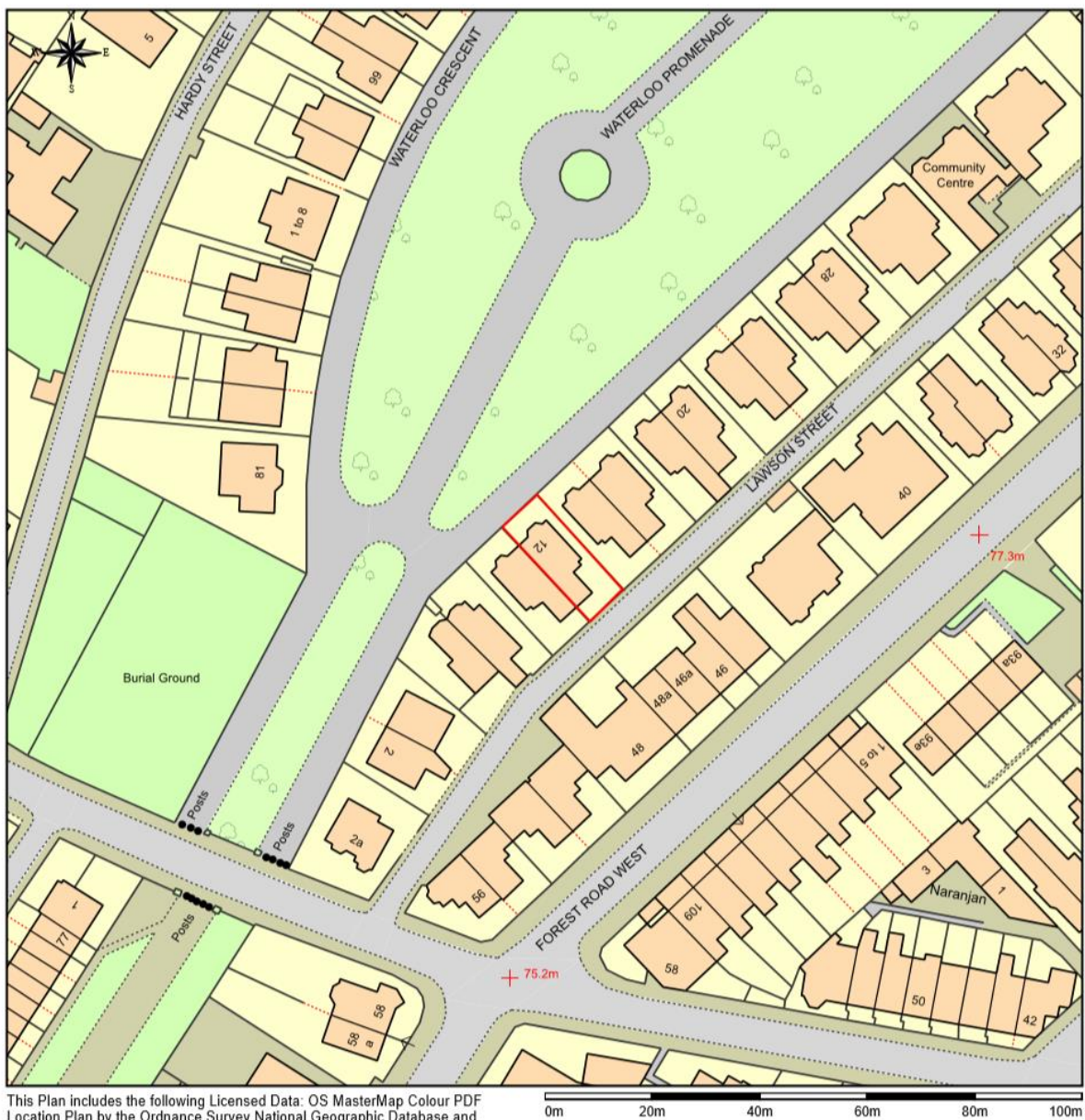
This is the plan referred to in the Lawful Development Certificate dated:

by P H Willows BA MRTPI

Land at: 12 Waterloo Road, Nottingham NG7 4AU

Reference: APP/Q3060/X/19/3228639

Scale: Not to scale



Scale: 1:1250, paper size: A4