



Appeal Decision

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 May 2020

Appeal Ref: APP/J2373/X/20/3247147

19-21 Boscombe Road, Blackpool FY4 1LW

- 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 Sajad Hussain of Northern Healthcare against the decision of Blackpool Borough Council.
 - The application Ref 19/0787, dated 28 November 2019, was refused by notice dated 27 January 2020.
 - 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 C2 residential care home.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Due to travel restrictions currently in place as a result of the COVID-19 pandemic I have sought the parties views as to whether the appeals can be determined without the need for a site visit. I have taken their views into account and am satisfied that the appeal can be determined on the evidence before me.
3. Notwithstanding the appellant's declaration on the appeal form, from the evidence before me it is evident that the reason for the appeal is that the Council has refused to grant a Lawful Development Certificate for an Existing Use. I have therefore dealt with the appeal on this basis.

Background and main issue

4. The Council refused the application because the use as a care home facility was not operational on the date of the application and there are no reversion rights to a lawful use as a care home. The main issue is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

Reasons

5. An application under S191(1)(a) of the Act¹ seeks to establish whether, at the time of the application, any existing use of buildings or other land is lawful. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.

¹ Town and Country Planning Act 1990 (as amended)

Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law.

6. The appellant applied for a Lawful Development Certificate (LDC) to establish if the existing use or development has become 'lawful' through the passage of time. Although not identified on the application form, it is clear from the grounds for application that the appellant also considers the site benefits from planning permission, reference 94/0559 and 79/0824.
7. Within its reason for refusal, the Council states that 'the use as a care home facility was not operational on the date of the application and there are no reversion rights to a lawful use as a care home'. The Council has questioned the validity of the appeal because the use was not existing at the time the application was made. However, there is no specific requirement that a use must be subsisting at the date of the application to be considered under section 191(1)(a) of the Act.
8. To succeed on this appeal, the appellant must prove on the balance of probability that the refusal of an LDC was not well founded. In light of the above, this will turn on (i) whether the site benefits from express planning permission; and if so (ii) whether that planning permission and any lawful use rights conferred by it have been lost as a result of an intervening use; or (iii) whether the use of the property changed to use as a C2 residential care home on or before 28 November 2009²; and if so (iv) whether that use then continued without significant interruption for at least 10 years thereafter.
9. Planning permission 79/0824 relates to the use of No 21 Boscombe Road as a residential home (class 14) and provision of fire escape and permission 94/0559 permitted the use of No 19 to provide 2 or 3 en-suite rooms for residents and to improve housekeeper's accommodation as an extension to the existing "Abbeyfield House" at 21 Boscombe Road. It is not disputed that planning permission has previously been granted at the site for use as a residential care home. Indeed, the Council points out that a condition attached to 79/0824 restricted the use of the premises to an 'elderly persons' residential home. The appellant states that the site is still registered as 'AbbeyField Society' which is the previous Residential Care Provider.
10. A letter, provided by the Director of Larking Handley Properties Ltd, advises that they purchased the property in 2015 from a residential provider and put in an application for change of use to a Student Nursing accommodation but that was refused, after which they sold the property on to Northern Healthcare. Whilst the letter states that the existing property has not had a change of use, it is not clear on what basis this claim is made.
11. The Council states that Council tax records show that the property was a House in Multiple Occupations (HMO) up to 7th November 2017, not a care home and that occupation of the property by 8 tenants was witnessed by an enforcement officer during a visit on 19 May 2015. The Council's delegated report also makes reference to neighbours' evidence that the property was used as an HMO for student nurses. A similar representation was made by an interested party in response to this appeal. Although the interested party certified his address as 19-21 Boscombe Road, which is the appeal address, and this must

² This being the date 10 years prior to the date of the LDC application.

limit its weight, the representation is consistent with the Council's contention that there has been at least one intervening unlawful use at the site.

12. The appellant has provided very little in the way of documentary evidence to counter the Council's evidence that the property has been used as an HMO. Furthermore, the appellant confirms, in the application form, that 'there was a brief period where the site was used as Nurses Accommodation'. This further supports the Council's position that there has been an intervening unlawful use and conflicts with the assertion that no change of use has occurred.
13. The Council has drawn my attention to a number of judgements³ which set out how lawful use rights could be lost. In *Panton and Farmer*, it was held that lawful use rights could only be lost by evidence of abandonment; by the formation of a new planning unit; or being superseded by a further change of use. Whilst planning permission was not granted for the use of the property as an HMO, it is established, through the *Fairstate* judgement that where there has been a material change of use, from a lawful use to an unlawful use, in the absence of an enforcement notice, there is no right to change back to the previous lawful use without planning permission.
14. The Council states that enforcement officers resolved the complaint regarding the change of use to an HMO without resorting to the service of an official enforcement notice. Since no enforcement notice was issued by the Council in respect of the HMO use, the consequence of the unauthorised change of use is that the lawful use of the site as a care home, has been abandoned.
15. From the evidence before me, on the balance of probability, I conclude that there has been a material change of use at the property from a residential care home to a House in Multiple Occupation. In light of the above, any lawful use rights conferred by the express planning permissions at the site have been lost as a result of the intervening unlawful use and there is no right of reversion to the last lawful use.
16. A letter from a nearby resident states that the premises has been used for more than 10 years as a care home. Whilst this may be true, since I have found that the use was abandoned in 2015, the use of the property as a care home has not continued without significant interruption, such that the planning authority would not have been able to take enforcement action, throughout the relevant period. As such, on the balance of probability, I find that the use of the property as a care home had not become lawful through the passage of time at the date of the LDC application.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the residential care home 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.

M Savage

INSPECTOR

³ *Young v SSE & Bexley LBC* [1983] JPL 465, *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461, *Fairstate Ltd v FSS & Westminster CC* [2005] EWCA Civ 283; JPL 1333