
Appeal Decision

by C Sherratt DipURP MRTPI

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

Decision date: 03 August 2020

Appeal Ref: APP/B4215/X/20/3245290
22 Lowestoft Street, Manchester, M14 7PU

- 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 Grant Property (Miss Claire Blezard) against the decision of Manchester City Council.
 - The application Ref 125141/LE/2019, dated 13 October 2019, was refused by notice dated 17 December 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 "C3 to C4 HMO".
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Procedural Matter

1. As the appeal turns on whether the evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the property has been occupied for a continuous period of 10 years or more prior to the date of the application, as a 'C4 HMO', it was not necessary to conduct a site visit.

Decision

2. The appeal is dismissed.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue a certificate is well founded. For the appeal to succeed, the onus is upon the appellant to demonstrate, on the balance of probability, that the property has been used for a continuous period of 10 years or more as a House in Multiple Occupation (HMO) falling within Class C4 of the schedule to the Town and Country Planning (Use Classes) Order 1987 (As Amended) (UCO), prior to the date of the application.

Reasons

4. Class C4 of the UCO refers to HMOs as the use of a dwellinghouse by not more than six residents as a "house in multiple occupation". It is distinct from Class C3 'Dwellinghouses' where the dwellinghouse would be used by up to 6 people forming a single household and would include a single person.
5. The appellant's case is that the use of the property as a Class C4 HMO commenced in September 2009 and has been occupied continuously for that purpose and thus in excess of 10 years at the date of the application. In such

- circumstances no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach (s171B(3)).
6. Evidence comprises tenancy agreements spanning the period 2009 – 2019. The copies provided are unsigned. The number of tenants listed ranges from 1 to 3 occupiers. A tenancy agreement for the period 1 September 2009 to 1 September 2010 allows occupation by no more than 3 occupants despite being in a single tenant's name. However no further evidence is provided to show whether more than one tenant did occupy it during this period.
 7. Furthermore, the tenancy agreements appear to relate to the property as a whole and most have terms that limit the occupation to the number of people named on the tenancy. Some tenancies during the critical period are entered into with only one named tenant with the occupancy terms stating that there shall be a maximum of one person. For instance, the 12-month tenancy agreements commencing 1 June 2011 and 25 March 2011, 7 December 2013 and a 3-month tenancy commencing 27 May 2012 all relate to one tenant only. It is not clear if the 2011 tenancies ran concurrently or not although it seems unlikely since both referred to a maximum of one person.
 8. From the written evidence alone, it is not clear whether the property was actually occupied for the full duration of the tenancy agreement periods although in some cases the name of a tenant or tenants spans more than one agreement suggesting that was indeed the case in those particular instances, such as between the period 7 December 2013 to 27 May 2016.
 9. Overall, the tenancy agreements and copies of deposit scheme certificates themselves do not demonstrate continuous occupation of the property as a HMO. There appears to have been substantial periods when only one person may have lived in the property. Where two or three people are party to the agreements it is not clear, from the written evidence available, their relationship with one another or how they lived together. The deposit security scheme certificates do not shed any additional light on this.
 10. The remaining documentation submitted, including the Information Pack and Selective License do not specifically demonstrate or lend sufficient support to the tenancy agreements to show continuous occupation over the ten-year period as a HMO.
 11. To conclude, the appellant has failed to demonstrate, on the balance of probabilities, that the premise at 22 Lowestoft Street has been used continuously as a Class C4 three bed HMO within Class C4 of the schedule to the UCO for a period of 10 years or more prior to the date of the application.
 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 a Class C4 three bed HMO within Class C4 of the schedule to the UCO 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.

C Sherratt

Inspector