
Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2020

Appeal Ref: APP/D1780/X/20/3245566

50 Gordon Avenue, Southampton, SO14 6WD

- 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 Dr E Fogg against the decision of Southampton City Council.
 - The application Ref: 18/01696/PLDC/36103, dated 11 June 2018, was refused by notice dated 30 July 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 use as an 8 bed House in Multiple Occupation (HMO).
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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 found to be lawful.

Main Issue

2. 50 Gordon Avenue is one half of a semi-detached pair of properties that the Council accepts has a lawful use as a 7 person HMO. Currently the property has seven bedrooms. It is proposed to divide bedroom 4 by inserting an internal corridor to increase the number of bedrooms from 7 to 8 so that the house may be occupied by 8 persons. No other alterations are proposed. I note that a planning application has been submitted to extend the appeal property and the one next door, but that is not before me and my decision is based on the plans submitted with this application for a LDC.
3. S55(1) of the 1990 Act defines the meaning of development. Relevant to this case is "the making of any material change in the use of any buildings or other land". Put simply the appellant argues that the proposal would not constitute development because there would not be a material change of use. The Council disagrees. The main issue therefore is whether there would be a material change in the use of 50 Gordon Avenue. That is a fact and degree assessment based upon whether there would be a change in the character of the use of the land. It does not include taking into account matters such as whether landlords in the area are having difficulties in letting such rooms.

Reasons

4. I understand the Council, and local, concerns about what can be the negative impacts of having high concentrations of HMO accommodation often occupied by students in a city. They might include extra noise and activity and sometimes problems around maintenance. The Council has highlighted concerns in this case about increased demand for on street parking and the standard of the accommodation to be provided by splitting bedroom 4 into two. I therefore also note that there is a city-wide Article 4 direction and the Council's HMO Supplementary Planning Document (SPD) which seek to restrict further escalation of HMO premises. The local area in this case already breaches a 10% threshold. However, such planning tools would seem most relevant when considering planning applications for changes of use, and not whether in law a proposal is a material change of use.
5. Apparently, the Council's parking standards for HMOs identifies an increased parking demand going from a 7 bed to an 8 bed HMO. Local concerns also express that there is already a high uptake of on road parking in the area. However, not only do I not have the Council's parking standards to substantiate the Council's case, there is no parking survey evidence to show whether on road parking is at or above capacity. In any event, it seems to me that the increase of one person, if that person had a car, would have an indiscernible effect on the wider overall demand for on road parking in the local area given that this is an area where on road parking is already prevalent. In this respect the proposed use would not materially change the character of the use of the property and it would not have a significant planning consequence.
6. It might be the case that by dividing bedroom 4 in the manner proposed would mean the outlook from the side window in the smaller room would be the only view available to the tenant of that room. However, that outlook and the inter-visibility between the windows of the adjoining property already exists. Consequently, there would be no change in that respect. Also, for whatever reason, the tenant of bedroom 4 does not have access to the further room/space where there is a window giving views out to the rear. As such, the amenity of the occupier of bedroom 4, with regard to outlook, would be unchanged. The bedroom would be smaller, but the Council has not shown that the space would be substandard. The occupier of that room would have access to the existing shared facilities in the property which has been licensed for such a use. One more person is unlikely to change the way those facilities are shared and used. The character of the use for tenants of the building would be unaltered in my view and without any noticeable planning consequences.
7. Given that the property is already lawfully used as a seven bed HMO, based on the circumstances of this case, 1 extra person with only the internal alterations proposed, would not lead to a definable change in the character of the land use or lead to any wider planning consequences or materially add to the concerns expressed about having too many HMOs in one area.

Conclusion

8. 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 in respect of use as an 8 bed House in Multiple Occupation (HMO) 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.

Gareth Symons

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 11 June 2018 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:

The proposed use would not amount to a material change in the use of the land. Therefore, the use would not be development requiring planning permission.

Signed

Gareth Symons

INSPECTOR

Date 17 August 2020

Reference: APP/D1780/X/20/3245566

First Schedule

An 8 bed House in Multiple Occupation (HMO).

Second Schedule

Land at 50 Gordon Avenue, Southampton, SO14 6WD

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: 17 August 2020

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Scale: Do not scale.

