The Planning Inspectorate

Appeal Decision

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 28 August 2020

Appeal Ref: APP/D1780/X/20/3245703
56 Hill Lane, Southampton SO15 5AZ

- 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 Jas Aujla against the decision of Southampton City Council.
- The application Ref 19/01465/ELDC, dated 26 August 2019, was refused by notice dated 20 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 for existing use as a house in multiple occupation (HMO, Class C4).

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Inspectorate initially arranged for this appeal to be determined following a site visit. However, having reviewed the file I consider the appeal can be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans and documentary evidence to understand the nature of the site, the grounds of appeal and the point in dispute.

Main Issue

3. The main issue is whether the Council's refusal to issue a certificate of lawfulness for the Class 4 HMO use was well founded.

4. Under s191(1)(a) of the 1990 Act, any person who wishes to ascertain whether any existing use of buildings or other land is lawful may make an application for the purpose to the local planning authority specifying the land and describing the use. S191(2)(a) of the 1990 Act specifies that for the purposes of the Act, uses and operations are lawful at any time if no enforcement action may then 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).

5. The time limit relevant for taking enforcement action under s171B(3) of the 1990 Act regarding the use of buildings or other land is the end of ten years beginning with the date of the breach. The ground under which the appellant

applied for the LDC was that the use began more than ten years before the date of the application.

6. The appellant therefore needs to show, on the balance of probability, that the use as a Class C4 HMO had existed on a substantially uninterrupted basis for at least ten years by the date of the application for the LDC, which was 26 August 2019. Consequently, the evidence to support that claim needs to date back to at least 26 August 2009. The burden to make out the case rests with the appellant.

Reasons

7. The appellant states that the use as an HMO has existed since December 2002 and has produced various tenancy agreements and receipts of payments by the Council and Test Valley District Council for occupation of the property – originally a two-storey semi-detached house – by various people.

8. However, these documents do not stretch to any continuous period of 10 years, or anywhere near it, and so do not constitute evidence of such. The tenancy agreements also refer to occupation of a dwelling-house and so are not evidence of the property's occupation as an HMO. The fact that there is more than one tenancy agreement during the same period of time is not indicative that the property was being used an HMO; it could simply have been shared as a dwelling house by a number of different tenants.

9. The receipts of moneys from the City Council and Test Valley DC are generally for short periods rarely exceeding a month, which is more indicative of the Councils' temporary housing of homeless people. The Council points out that such people were normally housed in hostels, a Class C1 use, which was the last established lawful use of the property. In any case these receipts only date from 2003 and the start of 2004.

10. The Council has a large volume of evidence to suggest that the property has not been in use as an HMO for anywhere near 10 years. It served an enforcement notice against Mr and Mrs Aujla in June 2018 against the unauthorised use of the property as self-contained flats. In the appeal against the notice, solely on ground (b) – that the matters alleged had not happened as a matter of fact – the Inspector found otherwise and dismissed the appeal.[1] Indeed he found in his decision that *"there is no evidence whatsoever that the property is either being used or is intended to be used as a guesthouse and it clearly is not an HMO"* and that it contained three self-contained flats and various other rooms that could form three more.

11. It is clear from that appeal documentation that there have been numerous building works at the property between 2012 and 2017 and that at least some of these involved the unauthorised conversion of the property to self-contained flats. It is also clear from the appeal decision that these works were ongoing at the time of the previous Inspector's visit in December 2018 and explain why the Council's licensing surveyor found that the *"property is clearly not being occupied as an HMO"* when he visited it on 19 June 2019.

12. Notwithstanding these facts, the appellant in that appeal argued that *"the property does not comprise four self-contained flats as alleged and will*

[1] APP/D1780/C/18/3206537 Dismissed and Notice upheld, dated 9 January 2019

continue to be operated as The Dell Guesthouse". The previous Inspector confirmed in paragraph 2 of his decision that that since the appellant acquired the property in 2000 *"he has operated it as a guesthouse for mainly homeless people referred to him by various local councils."* Clearly, if the appellant has fulfilled his commitment to continue using it as such since the last appeal, the property has been operating as a Class C1 guesthouse rather than an HMO.

13. Taking all the above in the round, the appellant's evidence falls well short of showing, on the balance of probability, that the HMO use had existed on a substantially uninterrupted basis for at least ten years by the date of the application for the LDC.

14. For the above reasons, I conclude that the Council's refusal to grant a certificate of lawful use or development was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195(3) of the Act as amended.

Nick Fagan

INSPECTOR