The Planning Inspectorate

Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 5 October 2020

Appeal Ref: APP/E2205/X/20/3250500
40 Bond Road, Ashford TN23 7UG

- 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 Scott Baylis against the decision of Ashford Borough Council (the LPA)
- The application Ref 19/00713/AS, dated 15 May 2019, was refused by notice dated 18 October 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 *'the house is a HMO with 4 toilets, 4 showers, 1 bath and 6 bedrooms with 7 people tenants'*.

Decision

1. The appeal is dismissed and a lawful development certificate (LDC) is not issued

Matters of clarification

2. Further to the case officer's letters to the parties, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the initial submissions, supplemented by additional information. The appellant and the Council have agreed to the appeal proceeding without a site visit and I am satisfied that, in dealing with it in this manner, no injustice is caused.

Background information

3. The appeal property is a detached dormer bungalow located on the north side of Bond Road, in a predominantly residential area, to the south of Ashford. The LPA inspection showed it to have a total of 6 separate rooms with 4 on the ground floor and 2 on the first floor. It also indicated that there was a shared kitchen and a shared bathroom. At the time of the LPA inspection one room had two occupants (see below relating to appellant's evidence). The current facilities are also referred to above, as described in the LDC application.

4. In September 2007, following an earlier application for refusal, a revised scheme was granted planning permission for a rear extension and dormer windows. The house was then in use as a HMO. In 2018, following a change in HMO Licensing it was found that the house was in a Sui Generis use as a large HMO (over 6 people) and as such required planning permission.

5. An application for retention of that use was refused in March 2019. The Council's reason for refusal was that the use was contrary to Policy HOU 11 of the adopted Ashford Local Plan and, in particular, that there was insufficient on-site car

parking. There had been objections to the application from people living close to the site. The application the subject of this LDC appeal was then submitted and, as indicated above, this was refused on 18 October 2019.

Reasons

Introduction

6. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered and the relevant test, relating to the submitted evidence, is *'the balance of probability'*.

7. Thus the previous material considerations relating to the parking issue cannot form part of my consideration of whether the use applied for was lawful on the date the LDC application was made (15 May 2019).

8. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient, precise and unambiguous information (my underlining), a LPA may be justified in refusing to grant a certificate.

9. However, PPG also indicates that if a LPA has no contrary evidence itself and there is none from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.

10. There is no dispute that the house is in use as a HMO. The question is whether or not it has been in use as a Sui Generis large HMO for the relevant period. In order for it to be lawful as a large HMO, in this case for 7 persons, it must be precisely and unambiguously demonstrated that the house has been in such a use for a continuous 10 year period commencing on or before 15 May 2009.

The gist of the case for the appellant

11, It is indicated that due to the *'Data Protection Act'* (DPA) and the *'General Data Protection Regulation'* (GDPR), evidence relating to the use was destroyed. Reference is made to the Gov.UK, whereby it is stated that 'Everyone responsible for using personal data has to follow strict rules called 'data protection principles' and that the information must be: *'kept for no longer than is necessary'.*

12. Thus rent books, tenancy information and the personal files of previous tenants were destroyed, making it difficult to show any evidence or facts about previous tenants. It is contended would be in contradiction of the law if these documents had been retained. However, two of the rooms have got tenants who are still resident from February 2008 and 31 March 2009. Statements and copies of rent books are provided as evidence.

13. The appellant indicates that he purchased the property in 2007 and then had an extension built comprising 4 extra rooms and bath/shower rooms. From then on it is stated that the house had 4 double bedrooms and 2 single bedrooms with 1 bath, 4 showers and 4 toilets. These facilities are stated to have been provided for 7 or more tenants, in excess of what would normally be required for a small HMO in Class C4.

14. It is indicated that Room 1 has had two tenants; Fay Hedges and Ian Kilsby since 31 March 2007 (rent books and letter provided). It is also indicated that Room 5 is occupied by one tenant Andrew Johnson (letter also provided). That leaves 4 other rooms with one tenant in each, resulting in 7 tenants. The appellant

adds that '*with Ashford`s large demand for room lets over the last 20 years, I can confirm that with all fairness and probability there has always been 7 tenants at the property from then on wards'* (sic).

The gist of the case for the Council

15. The Council's case is simply that the appellant has not demonstrated, on the balance of probability, that the property has been in use continuously as a large HMO for 7 persons for a period of 10 years or more, ending on 15 May 2019.

16. Whilst accepting that two tenants have been living in two of the rooms for the relevant 10 year period, the Council stresses that the evidence submitted is not sufficiently precise and unambiguous to indicate that other tenants have continually occupied the other 4 rooms for the same period of time. On that basis it is not considered that the use, as claimed, was lawful for planning purposes on the date of the LDC application, 15 May 2019.

My Assessment

17. Like the Council, I accept that at least 3 tenants have been shown to have lived at the property for a continuous ten year period prior to 15 May 2019. Even though the tenants' statements are not Statutory Declarations or Affidavits, I see no reason to doubt that they have lived there for that period of time and the Council has no evidence of its own to counter that put forward by the appellant.

18. However, from accepting that and on the basis of all of the evidence submitted, I consider that it would take a great leap of faith to conclude that the house had been in use continuously as a large HMO by 7 or more people for the relevant 10 year period. There is no dispute that it has been a HMO for that time but, clearly, there is insufficient precise and unambiguous evidence to demonstrate that such a use for that many people (7 or more) has been the case.

19. It may well have been that all 6 rooms had, at various times during the 10 year period been occupied. However, in order to be lawful the courts have held that the use must have been continuous for the relevant period subject only to short gaps for changeover of tenancies and maintenance purposes.

20. I have noted the appellant's comments in relation to the DPA and the GPDR and his confirmation that all details of former tenants and their rent books have been destroyed. I also acknowledge that landlords, by law, must protect all personal data relating to tenants. However, it is still the case that landlords can keep relevant information relating to tenancies, rents and agreements for as long as might be considered necessary. It is also the case that those earning income from the letting of properties should retain tax records for relevant periods.

21. It is not unreasonable to expect landlords to keep copies of bank statements, other receipts and invoices which would not infringe on the personal data or information relating to tenants. The appellant has not produced any bank statements of his own or details of rent payments for the other rooms which are stated to have been let for the relevant period. In other cases, where landlords have had to show evidence for the relevant period (be it 4 or 10 years), it is commonly the case that redacted evidence is supplied.

22. In conclusion, therefore, and on the basis of the evidence submitted I can only agree with the Council that the appellant has not demonstrated, on the balance of probability, that the property at No 40 Bond Street has been in continuous use as a large house in multiple occupation (for 7 or more persons) for a 10 year period from

on or before 15 May 2009. I find that the Council's decision not to issue a LDC was sound and that the appeal should fail.

Other Matters

23. In reaching my conclusions I have taken into account all of the relevant submissions. I have not taken into account the matters and comments by interested persons which relate to the merits of the Council's previous refusal for a change of use to a large HMO. These panning considerations can have no bearing on whether or not the use applied for was lawful on the date of the application.

24. Although I have found that the appeal should be dismissed, the appellant would not be precluded from submitting another LDC application if there is evidence of bank statements etc which indicated a continuous 10 year use as a large HMOfor 7 persons or more.

Formal Decision

25. The appeal is dismissed and a Lawful Development Certificate is not issued.

Anthony J Wharton

Inspector