



Appeal Decision

Site visit made on 21 July 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2020

Appeal Ref: APP/N4720/X/19/3239895 12 Stanmore Hill, Burley, Leeds LS4 2PW

- 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 Waid Dad against the decision of Leeds City Council.
 - The application Ref 19/01439/CLE, dated 8 March 2019, was refused by notice dated 19 August 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 use as C4 House in Multiple Occupation.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Appeals¹ against an enforcement notice alleging, without planning permission, the enlargement of a front dormer window at the appeal property are the subjects of separate Decisions. I have referred to some evidence from those appeals insofar as it is also relevant to this appeal.
3. Submissions by the appellant refer to housing benefits claims relating to the property, described as Appendix 3. I understand the appellant did not include this in the evidence submitted with the application but asked the Council to source it from its own records. As this evidence has not been provided by either party, I have not been able to take it into account.

Main Issue

4. The main issue is whether the Council's refusal to issue an LDC was well founded. This turns on whether the appellant can show, on the balance of probability, that the use as a house in multiple occupation (HMO) is lawful due to the passage of time.
5. For a change of use to an HMO, the evidence should show the use began on or before 8 March 2009 (the Relevant Date) and has continued thereafter without significant interruption. Any evidence of operational development involved in the conversion of the building, and when those conversion works were carried out, will also be pertinent.

¹ APP/N4720/C/19/3239955 and 3239956

6. A change of use from a dwellinghouse to a small HMO would have been permitted development under secondary legislation enacted 1 October 2010 and until 10 February 2012, when a Direction made by the Council made it development requiring planning permission. The property has 3 bedrooms and therefore, if in use as an HMO, it would be a small HMO. It is therefore also necessary to consider whether the evidence, including evidence of any conversion works, shows the use as an HMO began on or after 1 October 2010 and before 10 February 2012 (the Relevant Period) as a permitted development change of use from a dwellinghouse.

Reasons

7. The Planning Practice Guidance states "In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

Whether the use as an HMO began on or before the Relevant Date

8. The appellant states that the appeal property has been in use as an HMO for over 10 years and refers to evidence provided with his application indicating that it has not been occupied as a family home. The Council claims that the property comprised 3 flats.
9. An estate agent's brochure confirms that the accommodation included a lounge and a kitchen on the ground floor with 3 bedrooms, one in the cellar, one on the first floor and one on the second floor, in July 2018. The bedrooms in the cellar and on the second floor each had en-suite bathrooms and a separate bathroom existed on the first floor. Photographs in the brochure show 3 different baths. The bedrooms on the first and second floors were described as "studio style" and included kitchen areas. As described in this document, the accommodation included areas that could have supported occupation by a single household, in particular a lounge on the ground floor, as well as facilities that could have supported separate living, particularly on the first and second floors. However, this evidence does not show whether use as an HMO began on or before the Relevant Date or whether and when any conversion works enabling use as an HMO were carried out.
10. An email from the appellant's letting agent in June 2019 stated that the property had been split into individual studio apartments, each with its own kitchenette, when the appellant acquired the property in July 2018. The letting agent thought this suggested it had been rented out to separate individuals and not laid out as a family home. The appellant considers the existence of fire doors and smoke alarms on each floor indicates that the property had previously been used as an HMO, although it has not been suggested that those features would not be found in a building comprising 3 flats. The appellant believes that tenants shared the living room and kitchen on the ground floor, consistent with occupation of an HMO, although no evidence to support this has been provided. The evidence does not show whether or when any conversion works enabling use as an HMO were carried out.
11. Different details of the layout of the property appear in floor plans submitted to the Council in December 2018, seeking planning permission for a change of use

to a 5-bedroom HMO and enlargement of a dormer window². The existing floor plans indicate that the first floor kitchen area had been removed and the en-suite bathroom and kitchen area had been removed from the second floor, leaving only the ground floor kitchen. The same drawing indicates that the bath in the cellar had been replaced with a shower. The differences from the estate agent's description of the property 5 months earlier indicate that substantial changes had already been made to the accommodation but the evidence before me does not provide any explanation for this.

12. Council Tax data records the property as 3 separate flats between December 2010 and November 2016: Flat 1 at basement level, Flat 2 on the first floor and Flat 3 on the second floor. Council Tax bills and a Band search, all dated May 2019, show the property as 3 flats. This evidence does not identify any occupiers by name, and it does not indicate which dates relate to periods of occupation and which might be void periods. Neither does it include the Relevant Date or all of the subsequent 10-year period.
13. The appellant contends that the electoral register shows name changes over the last 7 years, demonstrating that the property was used for short-term letting. The submitted evidence is a handwritten note, not the register itself, however the Council has not questioned or challenged the content so I shall consider it on face value. The earliest record in this evidence is from December 2011, so it cannot demonstrate that an HMO existed on or before the Relevant Date. The evidence also records only one person, in Flat 3, between December 2011 and November 2014, which does not demonstrate multiple occupation during that period.
14. Information provided by British Gas confirms that it opened 5 separate gas and electricity accounts for tenants between March 2008 and July 2018. The appellant states these were 5 different tenants, although no names are included, and claims that it shows the property was used as an HMO with short-term occupancy. Of itself, this evidence lends some support to the claim of an HMO rather than 3 flats, although 2 of the accounts overlapped, albeit only for a week. However, the evidence cannot show whether there were contemporary accounts with other suppliers, and it confirms that one account lasted for over 7 years, which is not consistent with short-term occupancy.
15. A prohibition order under the Housing Act 2004 was placed on the property on 25 February 2016 and a copy was given to a letting agency, Studentprops Leeds Limited. The appellant contends that this shows that the property was rented and occupied by unrelated tenants as an HMO. I agree the order indicates that the property was let, in all probability by unrelated people. However, while the description of the prohibited accommodation in the order includes communal areas, this is not explained. The order does not state that use as an HMO began on or before the Relevant Date or that it had continued without significant interruption until the order came into effect.
16. Only one of the above items of evidence, the information about utilities accounts, covers a period including the Relevant Date and even that evidence is unclear in terms of how the property was used at that time. Viewed overall, the submitted evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that a change of use to an HMO occurred on or before the Relevant Date.

² 18/07595/FU, refused 20 February 2019, appeal APP/N4720/W/19/3225897 dismissed 10 July 2019

Whether the use continued thereafter without significant interruption

17. The appellant acknowledges there have been vacant periods, which he considers were due to circumstances beyond his control, including reduced demand for the type of accommodation, the condition of the property, and the prohibition order.
18. The prohibition order had been served on the previous owner of the property and remained in effect until it was revoked on 19 August 2019, after the appellant had acquired the property and carried out improvement works. The order prevented the property being occupied for approximately 3½ years, although other records suggest it may have been occupied until November 2016 (Council Tax) or January 2017 (electoral register note). However, the Council Tax bills provided record that each of the 3 flats was subject to a Long Term Empty Premium, which applies if a property has been unoccupied and unfurnished for over 2 years.
19. In addition, the electoral register note indicates that not only was the property vacant from December 2017 onwards, consistent with the prohibition order, but also between November 2014 and November 2015. While it is possible that people not on the electoral register were resident at times, these periods of vacancy are a significant interruption to the claimed continuous use as an HMO. I appreciate that they were beyond the appellant's control because he only became owner of the property in July 2018. However, even if a change of use to an HMO had occurred on or before the Relevant Date, the evidence is not sufficiently precise and unambiguous to show, on the balance of probability, that the use continued without significant interruption thereafter.

Whether a permitted development change of use from dwellinghouse to a small HMO occurred during the Relevant Period

20. Although the appellant has identified this was possible, he has not produced any evidence that it occurred. The evidence reviewed above indicates that Council Tax records for Flat 1 changed once and those for Flat 2 changed 3 times during the Relevant Period, although the nature of those changes is unclear. No changes are recorded for Flat 3 during this period.
21. The electoral register note does not suggest any changes occurred during the Relevant Period. Only one person is recorded, in Flat 3, from December 2011 onwards. While the possibility of other occupiers who were not on the register should not be dismissed, the occupier of Flat 3 is recorded as being there for just under 3 years, from December 2011 to November 2014. No evidence of this tenant forming a single household with a succession of shorter-term tenants has been submitted.
22. While I have noted that some parts of the accommodation, in particular the ground floor lounge, could have been shared by tenants, no evidence that this happened, and therefore that the property had previously been occupied by persons forming a single household, has been provided. This evidence is essential because the permitted development right for a change of use to a small HMO only existed for a dwellinghouse, defined since April 2010 by occupation by a single household³. In contrast, the layout described by the estate agent in July 2018, in particular the 3 kitchen areas and 3 bathrooms,

³ Use Classes C3(a), C3(b) and C3(c) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended.

points to occupation of the property by persons not forming a single household. Consequently, on the balance of probability, the evidence is not sufficiently precise and unambiguous to demonstrate that the conditions for a permitted development change of use to an HMO existed during the Relevant Period.

23. Even if the property had previously been in use as a dwellinghouse, the limited evidence does not point to a material change in the character of the occupation of the property, or show that conversion works enabling use as an HMO were carried out, during the Relevant Period. It is therefore not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that a change of use to an HMO occurred during the Relevant Period.
24. I appreciate that it has been difficult for the appellant to provide evidence pre-dating his acquisition of the property, for example tenancy agreements, which would afford greater clarity. However, the burden of proof is on him to demonstrate that use as an HMO began on or before the Relevant Date, and has continued since without significant interruption, or that it occurred as a permitted development change of use from a dwellinghouse during the Relevant Period.

Other matters

25. The appellant claims that many properties in the immediate area of 12 Stanmore Hill have been granted a Certificate of Lawful Existing Use or Development for use as HMOs and has provided evidence for other properties. While I appreciate the appellant finds it hard to understand why he cannot obtain a similar certificate, the facts relating to the appeal property will be unique and each application must be considered on its merits.

Conclusion

26. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use as a C4 HMO 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.

Mark Harbottle

INSPECTOR