
Appeal Decision

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal Ref: APP/W2465/X/20/3256215

29 Harrow Road LEICESTER LE3 0JY

- 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 Priya Properties against the decision of Leicester City Council.
 - The application Ref 20192059 dated 28 October 2019, was refused by notice dated 13 May 2020.
 - 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 described as 'Use of 29 Harrow Road, Leicester as a House in Multiple Occupation (C4 Use Class)'.
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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 existing use which is considered to be lawful.

Procedural Matter

2. Having considered the particular points of dispute in this case, and bearing in mind the need to minimise contact with others during the current pandemic, I did not visit the appeal property. Both parties were consulted before I made that decision and were content with it.

Main Issue

3. The main issue is whether the use of the property as a House in Multiple Occupation (Use Class C4) is lawful.

Reasons

General approach to LDCs

4. Advice relating to LDCs is provided by the Government's Planning Practice Guidance (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. 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. A local planning authority

needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits are not relevant.

The requirements to establish lawfulness in this case

5. Section 191(2) of the Act states that:

For the purposes of this Act uses and operations are lawful at any time if—

(a) 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); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

6. It does not appear that any enforcement notice was in force at the date when the application for the LDC was made. Accordingly, my decision hinges solely on s191(2)(a).

Background

7. It is common ground that prior to 20 August 2014 the property benefited from permitted development provisions which would have enabled it to move between use as a dwellinghouse (Class C3, as defined by *The Town and Country Planning (Use Classes) Order 1987* (as amended)) to use as an HMO (Class C4). However, on 20 August 2014 an Article 4 Direction which prevented change from Class C3 use to a Class C4 use in this particular area came into effect. Consequently, the parties agree that the HMO use would have been lawful when the LDC application was made if:

- The property was in use as an HMO (rather than as a dwellinghouse) when the Article 4 Direction came into effect; and
- It continued in that use until the LDC application was made.

8. Much about the history of the property is agreed and it appears to have been used as an HMO for much of the period from when the current owner bought it in 2001 up until 28 June 2014 and also in the period from 5 February 2019 to the date of the LDC application (28 October 2019). Having considered the evidence available, I have no reason to doubt that this is the case.

9. Thus, the focus in this case is on the period from 20 August 2014 (when the Article 4 Direction came into effect) until 5 February 2019 (after which, there is agreement about how the property has been used. I refer to this below as 'the relevant period').

10. The evidence provided by the appellant includes rent agreements, 4 statutory declarations and a witness statement, and I consider these below.

Rent agreements

11. The appellant's evidence indicates that from 6 July 2014 to 5 January 2015, an Assured Shorthold Tenancy Agreement was held by Mr Aleksandr Grogorjev. This agreement was continued as a periodic tenancy until 5 June 2015. The appellant has provided evidence of this in the form of a rent agreement.

12. From 6 June 2015 until 5 February 2019 it is said that the property was let to a company called Euro Rent Leicester Ltd. A rent agreement has been provided but this only covers the period 6 June 2015 to 5 December 2015. Moreover, the Council has provided evidence, which is not challenged, to show that Euro Rent Leicester Ltd was dissolved on 25 July 2017.
13. Evidence provided by the appellant indicates that payments were received from Euro Rent into 2018, after the company was dissolved. The appellant has not been able to explain this anomaly. That said, I have no information to show that this affected how the property was used during the relevant period.
14. The appellant advises that once the payments from Euro Rent stopped, rent was collected directly from the tenants. I have been provided with evidence of 4 payments made by individuals in April 2018. This suggests that the property was in multiple occupancy at that time. There is no mention of these payments in the statutory declarations and it is not clear why there is only evidence of such payments for a single month.
15. Copies of the relevant agreements are attached to the 4 statutory declarations. Also attached is a letter dated 4 July 2014 from the property agent (Priya Properties) to Mr Grogorjev stating that permission is given to sublet the property for the duration of the tenancy, subject to a limitation of not exceeding 5 occupants. A similar letter was provided to Euro Rent on 18 May 2015.
16. The rent agreements do not show whether or not the property was sublet or to whom, and the appellant relies on other evidence to make its case in this regard.

Statutory Declarations

17. Four statutory declarations make claims about how the property has been used, including during the relevant period.
18. Timothy Andrew Clinton owns the property. He states that the property was let to Aleksandr Grogorjev for the period 6 July 2014 until 5 June 2015. He also states that the agreement with Euro Rent continued from 6 June 2015 until 5 February 2019. This appears to be wrong, given the Council's evidence showing that Euro Rent was dissolved in July 2017.
19. Mr Clinton refers to 'the understood purpose of sub-letting the rooms to 5 individuals'. He continues 'I visited the property intermittently in that time and this appeared to be true'. No other detail is given to explain how that view was reached.
20. Sanjiv Raithatha, a Lettings Manager at Priya Properties, recalls the lettings arrangements along the same lines as Mr Clinton, including the same period for Euro Rent. There is no indication of any personal visit to the property during the relevant period.
21. Aleksandr Grogorjev indicates that he held a tenancy of the property from 6 July 2014 until 5 June 2015, and that Euro Rent Leicester Limited were then responsible for the property until February 2019. He says that he was a regular visitor to the property throughout this period. He advises that the property was permanently occupied throughout the period and that '5 people generally lived

- in 29 Harrow Road as a shared house, although occasionally one room may have been vacant when one person moved out and before another moved in’.
22. Mr Grogorjev states that he was employed as an agent for Euro Rent from June 2016 to May 2017. The Council advises that Mr Grogorjev was also a director of Euro Rent in a period during 2014 and its evidence on the matter is not disputed. This is not reflected in his Statutory Declaration. No mention is made of the company having been dissolved, despite Mr Grogorjev’s clear involvement with it, including being an employee until shortly before it was dissolved. Indeed, Mr Grogorjev states that Euro Rent was responsible for the property until February 2019. After his employment ceased, Mr Grogorjev says he continued to visit the property because he was a friend of the owner of Euro Rent, who oversaw the house. I find it difficult to understand this explanation, given the demise of Euro Rent. For these reasons I do not find the evidence of Mr Grogorjev persuasive and attach little weight to it.
23. Kishor Gohil, an employee of Priya Properties since July 2000, states that, ‘the intention of the landlord has always been to let 29 Harrow Road to five students and it is to that end the property has been marketed’. The statement adds that it has occasionally not been possible to secure five students.
24. Mr Gohil states that in the period 6 July 2014 to 5 February 2019 ‘the property was occupied as a HMO to various five employed tenants through the rent-to-rent arrangement, firstly with Aleksandr Grogorjev and subsequently Euro Rent Leicester Ltd.....I personally negotiated these arrangements on the understanding that five unrelated tenants would be living in the property with their own front door key and lockable bedrooms and shared kitchen, dining room, living room and bathroom facilities and documented this with a letter giving permission for no more than 5 occupants’. This is a reference to the letters referred to earlier, giving permission to sublet the property.
25. Mr Gohil also states that, ‘When I visited the property throughout the period 6th July 2014 to 5th February 2019 I saw that the tenants were occupying their own rooms, which were generally kept locked for security when tenants were out and privacy when the tenants were at home. Most of the tenants had their own TV’s in their bedrooms’.
26. This statutory declaration, like the others before me, incorrectly suggests that the property was let to Euro Rent up until February 2019. There is nothing before me to show why Mr Gohil should have come to this view and it detracts from the evidence to a degree, given the claim of a personal hand in negotiating the arrangements for the property. On the other hand, the key relevance of Mr Gohil’s evidence in my view is his inspections of the property. He makes the specific claim that the property was inspected personally and was, ‘occupied as a HMO to various five employed tenants’ during the relevant period. The claim of lockable rooms is consistent with HMO use, although plainly not definitive proof. The declaration is signed and witnessed and I attach some weight to it accordingly.
27. Mr Gohil has not provided details of specific visits during the relevant period. The Declaration also lacks details of how he knows the occupants were tenants, how he knows they were employed and whether they were, in fact, unrelated. Further details and documents to fill in these gaps would have bolstered the appellant’s case. Nevertheless, within the limitations I have identified the

statutory declaration itself provides relevant and specific evidence about the use of the property during the relevant period.

Witness Statement

28. A witness statement dated 6 July 2020 has been provided by Derek Durrance, who has lived nearby on Harrow Road since 1982 and advises that he has met the various tenants who have lived at 29 Harrow Road over the years.
29. He states that there were 5 students in the property 'approximately 10 years ago', which would have been about 2010. He adds that, 'Approximately 5 years ago after the students moved out, a group of 5 European individuals moved into the property. The same group of people lived there for a long time'. 'Approximately 5 years ago' would have been around 2015. The reference to 'students' and 'individuals' suggests to me that Mr Durrance did not regard the tenants as family groupings.
30. The Statement adds that, after this group of people moved out, builders started work on the property. It seems clear from the statement that these were the 2019 building works. Thus, the statement suggests that the building was occupied by different groups of 5 people during the approximate period 2010-2019. This would be consistent with use as an HMO.
31. This statement is not a perfect fit with the other evidence provided by the appellant. It implies that the students and 'European individuals' were fixed groups of 5 rather than changeable collections of individuals. It also states that there were no major works to the property prior to 2019, whereas other evidence shows that the building must have changed from use as flats at some point, making building works likely. However, the detailed make-up of the groups might not have been obvious to an outside observer and the extent of building works associated with conversion from flats is not clear and the works could have taken place many years ago. Mr Durrance also states an understanding that the group moved out owing the landlord money and that the works were carried out due to the state they left the property in, but I do not see any inconsistency between that and any of the statutory declarations before me.
32. Accordingly, these matters do not undermine the credibility of the statement overall in my view. The general recollection in the statement of different groups of 5 students and individuals over the last 5-10 years is broadly consistent with the statutory declarations and supports the appellant's case.

Other evidence

33. The Council report dealing with the making of the Article 4 direction included maps showing student accommodation at the time. The parties do not agree as to what it shows about the appeal property but, in any event, the report was from July 2013, before the relevant period.
34. A resident who states she has lived in the property opposite since 1975 commented on the LDC application. She states that No 29 has only ever been 2 self-contained flats since 1975. While it appears that the building was used for flats at some stage, the suggestion that this has been the only use is at odds with the significant body of evidence which indicates that the building has been let to 4 or 5 individuals for a significant period from 2001. Changes between

use as flats and use as an HMO might not have been obvious to residents of other properties in the road. Accordingly, I give little weight to this representation.

35. Council Tax records show 2 occupiers during Mr Grogorjev's tenancy, which the Council advises is a 'default' where no single person discount has been applied. The records show an 'occupied charge' for the first part of Euro Rent's tenancy. The Council Tax information does not clearly demonstrate how many people actually occupied the building during either of these periods. It indicates that the property was empty between 1 April 2017 and 5 February 2019. That is disputed by the appellant. However, even if it was empty, that would not indicate a change in the lawful use of the property.
36. Prior to the Article 4 Direction coming into effect, the Council introduced a scheme to allow people to register HMOs in order to establish the use of the property. However, the scheme was voluntary and the fact that the appeal property was not registered does not undermine the appellant's case.

Assessment

37. It appears probable to me that the dwelling was in use as an HMO when the Article 4 Direction came into effect on 20 August 2014. The details of tenants provided by the appellant indicate that it was let to 5 individuals until 28 June 2014. Although the letting arrangements subsequently changed and the information is far less definitive for the following period, there was specific provision within the new lettings contract to enable the property to be sub-let, up to a maximum of 5 occupants in total. There is no firm evidence to show that the way the property was used changed at this point, so continued use as an HMO seems a likely outcome.
38. Moreover, the evidence of Mr Gohil is clear and specific on the following matters:
- That he personally inspected the property on a 6 monthly basis
 - That in the period 6 July 2014 to 5 February 2019 the property was occupied as an HMO by 'various five employed tenants'
 - That when he inspected the property he saw that the tenants were occupying their own rooms, each of which had a lock, and sharing a kitchen, dining room, living room and bathroom facilities.
39. This suggests to me that use as an HMO continued through the relevant period. It is unfortunate that the dissolution of Euro Rent is not recognised in this statutory declaration. However, Mr Gohil's claims relating to how the property was used is broadly supported by the statement of Mr Durrance, who suggests that it was generally occupied by 5 individuals for a period of approximately 10 years prior to his statement. Read together, these 2 pieces of evidence tilt matters in the appellant's favour.
40. The details of tenants during this period is sparse. However, there is evidence of 4 rent payments in April 2018, and some details of the tenants who made the payments have been provided, which is consistent with use as an HMO at this point in time.
41. The burden of proof in this case falls on the appellant. Overall, while the appellant's evidence leaves some questions unanswered, it points consistently towards use as an HMO and none of the points raised by the Council is

sufficient to persuade me, on the balance of probability, that this central claim regarding the use of the property is wrong. Accordingly, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of 29 Harrow Road, Leicester as a House in Multiple Occupation 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.

Peter Willows

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 28 October 2019 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated on the balance of probability that the building was in use as a House in Multiple Occupation (Use Class C4) on 20 August 2014, when the Article 4 Direction restricting change to C4 use came into effect, and remained in that use until 28 October 2019, when the LDC application was made.

Signed

Peter Willows

Inspector

Date: 4 January 2021

Reference: APP/W2465/X/20/3256215

First Schedule

Use of 29 Harrow Road, Leicester as a House in Multiple Occupation (C4 Use Class)

Second Schedule

Land at 29 Harrow Road LEICESTER LE3 0JY

NOTES

This certificate is issued solely for the purpose of Section 191 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 was 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 4 January 2021

by **P H Willows MRTPI**

Land at: 29 Harrow Road LEICESTER LE3 0JY

Reference: APP/W2465/X/20/3256215

Scale: Not to scale

