



Appeal Decision

Site visit made on 22 December 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 01 February 2021

Appeal Ref: APP/Q1445/X/20/3256324
112 Coombe Road, Brighton BN2 4EE

- 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 Simon Parr against the decision of Brighton & Hove City Council.
 - The application Ref BH2019/03639, dated 6 December 2019, was refused by notice dated 26 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 a 4no. bedroom small house in multiple occupation (Class C4).
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Decision

1. The appeal is dismissed.

Main Issue and Reasons

2. The main issue is whether the Council's refusal to issue a certificate of lawfulness for a Class C4 house in multiple occupation (HMO) was well founded.
3. 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).
4. 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, which would be 6 December 2009 in this case. The appellant needs to demonstrate that conclusively, on the balance of probability.
5. He has provided two Assured Shorthold Tenancy agreements dated 30 August 2010 and 15 August 2011 signed by four unrelated individuals, specifying an 11 and 12 month rental period respectively. For the remainder of the last 10-year period he has submitted two letters from the University of Sussex. The

- most recent of these confirms that the University has headleased the property from the appellant for its use by four unrelated full-time (Council tax exempt) University students in yearly contracts continuously from September 2012 to 13 September 2020.
6. The first point to make here is that, simply as a matter of fact, the documentation provided does not demonstrate that a Class C4 HMO use has existed at the property since 6 December 2009. That is because the first tenancy agreement only commenced on 30 August 2010, a period of less than 10 years from when the application was made on 6 December 2019.
 7. However, and more fundamentally, as argued by the Council as Local Planning Authority, the headlease of the property to the University since September 2012 means that it has not been a Class C4 HMO since that date until last September, for the reason explained below.
 8. The appellant acknowledges that no HMO License has been required as a result of this but argues this does not mean the property has not effectively been used as a Class C4 HMO since 2010. It is apposite to highlight here that although change of use from a Class C3 dwellinghouse to a Class C4 small (no more than six residents) HMO is normally permitted development, that is not so in Brighton where the LPA introduced an Article 4 Direction for this part of the city in 2013 and citywide on 3 June 2020.
 9. In the Use Classes Order¹ the Interpretation section of Class C4 makes clear that for its purposes an HMO has the same meaning as in Section 254 of the Housing Act 2004. S254(5) states that a building is not an HMO if it is listed in Schedule 14 of that Act. The list in Schedule 14 includes buildings occupied by students on full-time courses at a specified educational establishment (which includes the University of Sussex) and where the person managing or having control of the property is the educational establishment in question. That is undoubtedly the case here, notwithstanding that the appellant has continued to be responsible for the upkeep, repair, safety and insurance of the property. That is why the property did not require a separate HMO License until after 13 September 2020, in other words because it was not legally an HMO.
 10. For these reasons and on the balance of probability, the appellant's evidence does not show that a Class C4 HMO use has existed on an uninterrupted basis since 6 December 2009, in other words for 10 years prior to the submission of the application.
 11. 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

¹ The Town and Country Planning (Use Classes) Order 1987 as amended