
Appeal Decision

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2021

Appeal Ref: APP/F5540/X/20/3255026

9 Pownall Gardens, Hounslow TW3 1YW

- 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 Darren Reeve of Link Estates Limited against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00891/9/LAW1, dated 20 April 2020, was refused by notice dated 15 June 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 as a House in Multiple Occupation "Sui Generis" accommodating more than six people.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Planning Inspectorate initially made arrangements for the appeal to be dealt with under the written representations procedure following a site visit. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could 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 given the grounds of appeal and points in dispute.
3. The parties were contacted on 7 January 2021. The appellant advised that it was his view that a site visit was necessary to assist me in accurately contextualising the evidence. I considered this comment but was not persuaded that it provided justification to require a site visit in this case. I advised the appellant accordingly. The Council did not provide any comments, but I have also confirmed my intentions to the Council as part of my response to the appellant.
4. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended (the Act), which relates to an application for a LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.

Main Issue

5. The main issue is whether the Council's decision to refuse the application for an LDC was well-founded.

Reasons

6. The appellant has set out in his application form that he is seeking a certificate for an existing use and that that use falls to be considered as 'sui generis' to the use classes set out in the Town and Country Planning (Use Classes) Order 1987 (as amended). The description of the existing use for which the LDC is sought is set out on the application form as a House in Multiple Occupation accommodating more than six people. The Council has used the same description in its decision.
7. An LDC application must relate to a specific existing or proposed use, operation or activity and the application was made in those terms. The Council considers that in order for an LDC to be granted it is necessary to establish that the use as a House in Multiple Occupation (HMO) has been in operation for at least 10 years up to the date of the submission of the application. This is the test which falls to be considered under 171B (3) of the Town and Country Planning Act 1990 (as amended) (the Act) and relates to 'any other breach of planning control'.
8. The appellant submitted copies of three HMO licences granted by the Council in support of his application to the Council, which the Council accepts establish that the premises have been licenced for use as an HMO for ten years. The appellant has provided a statement of truth by Mr Fahed Al-Kurdi in addition to the HMO licences but no other additional information in support of his appeal.
9. The appellant says that the plans of 9 Pownall Gardens prior to 23 February 2018 are unknown. The plans which have been submitted show a number of bedrooms in the property but there is no evidence of how many people occupied the rooms. It is probable, on the basis of the layout, that at least eight people occupied the premises. However, by the appellants own admission this assumption can only be relied upon in relation to the use just over two years before the date of the submission of his application, not the 10 year period which must be demonstrated.
10. The copies of the HMO licences do not establish how many people have been accommodated at 9 Pownall Gardens, only that the premises have been licenced to accommodate a maximum of 12, 10 and 15 people respectively over a period between 3 October 2007 and until 23 February 2023.
11. In his statement of truth Mr Al-Kurdi says that the premises have been in continuous use as an HMO as described in the HMO licences since September 2007. However, the weight to be attached to the statement of truth is limited. It is not a Statutory Declaration having not been witnessed by a solicitor, commissioner for oaths or notary public and it does not include the necessary form of words set out in the Statutory Declarations Act 1835.
12. Whilst if there is no evidence to contradict the appellants version of events, that evidence should be accepted, this is dependent on the appellants evidence being sufficiently precise and unambiguous in the first instance to meet the test of the balance of probability.

13. The evidence provided by the appellant has a significant level of ambiguity. Whilst he says that the premises have been occupied in accordance with the licences there is no evidence of this. The HMO licenses do not demonstrate that 9 Pownall Gardens has been occupied as an HMO by more than six people since April 2010. The licences only show that under the terms of the Housing Act 2004 the premises could have been used as an HMO subject to a specified maximum number of households/people.
14. The statement of truth attracts limited weight and there is no evidence to support what is being said by Mr Al-Kurdi such as information about the number of people living in the premises in the form of copies of leases naming individuals or statements from residents.
15. The appellant is critical of the Council for saying that more information would be sought from him if required at the time of the application and thereafter not requesting any before determining the application. He says that the statement of truth could have been provided if it had been requested. However, the onus of proof is on the appellant and in any event as I have found the statement of truth is of limited weight. The encouragement of effective engagement between applicants and local planning authorities provided by the National Planning Policy Framework, also does not override the applicant's obligations in terms of the onus of proof.
16. Planning Practice Guidance establishes that a local planning authority always needs to co-operate with an applicant who is seeking information which the authority holds about the planning status of the land. However, there was no obligation upon the planning officers to seek information from the Director of Housing.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a House in Multiple Occupation "Sui Generis" accommodating more than six people at 9 Pownall Gardens, Hounslow 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.

Sarah Dyer

Inspector