



Appeal Decisions

Site visit made on 23 March 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 01 April 2021

Appeal A Ref: APP/B4215/X/20/3257281

8 Birch Polygon, Manchester M14 5HX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Victoria Griffin against the decision of Manchester City Council.
- The application Ref 126537/LE/2020, dated 18 March 2020, was refused by notice dated 13 May 2020.
- The application was made under section 191(1)(a) of the 1990 Act as amended.
- The use for which a certificate of lawful use or development is sought is a house in multiple occupation with 11 letting rooms.

Summary of Decision: The appeal is dismissed.

Appeal B Ref: APP/B4215/W/20/3260172

8 Birch Polygon, Manchester M14 5HX

- The appeal is made under section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by Mrs Victoria Griffin against the decision of Manchester City Council.
- The application Ref 127300/FO/2020, dated 29 June 2020, was refused by notice dated 27 August 2020.
- The development proposed is described as "Single storey rear extension and conversion of property to provide five self-contained apartments with associated parking and amenity space (Resubmission of 124997/FO/2019)".

Summary of Decision: The appeal is dismissed.

Appeal A: Ref: APP/B4215/X/20/3257281

Preliminary Matters

1. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

2. It is clear from the application and supporting documents that the appellant is claiming the lawfulness of the property as a house in multiple occupation (HMO) with eleven letting rooms. This would be a 'large HMO', which is 'sui generis', or outside of any use class, for the purposes of the Use Classes Order¹. I have considered the appeal on this basis.
3. For the avoidance of doubt, the planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. These matters are relevant to the related Appeal B.
4. Section 191(2) of the 1990 Act provides that uses are lawful at any time if no enforcement action may be taken in respect of them ... because the time for enforcement action has expired. Under section 171(B)(3), which concerns any other breaches of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The Council has indicated that it is necessary to show ten years continuous use, working back from the date of the application. Upon the meaning of s171(B)(3), this interpretation is incorrect. The Council refers to a previous appeal decision in support of its stance on this matter². However, the Inspector simply refers to the relevant period as being prior to the date of the application, not immediately preceding the date of the application.
5. I must consider whether the appellant has shown, on the balance of probability, that a material change of use to a large HMO occurred on or before 18 March 2010 and that use continued after the date of change for ten years, without significant interruption³.

Main Issue

6. The application was seeking to establish that the use of the building as a large HMO, with eleven letting rooms, was lawful at the date of the application. If lawful rights have been shown to be accrued, I must also consider whether there has been any subsequent material change of use, or any other change in circumstances, that would cause any lawful established use of the premises to be lost⁴.
7. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

Evidence

8. The appellant has supplied sworn evidence in the form of a Statutory Declaration⁵. This states that they purchased the property in June 2019. The layout and features of the property are described and a summary and photographic inventory is provided.

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

² Ref APP/B4215/X/20/3245290 dated 3 August 2020.

³ *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226. The Courts have ruled that it is necessary to demonstrate there was no significant interruption in the use during the relevant period, since during any such periods the Council would have been unable to take enforcement action.

⁴ *Panton and Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461. Lawful use rights could only be lost by evidence of abandonment; by the formation of a new planning unit; or by being superseded by a further change of use.

⁵ Under the Statutory Declarations Act 1835.

9. The layout plan shows the configuration of the premises, which is divided into 11 letting rooms. I understand that all 11 rooms had sinks with water heaters and electric meters⁶, and there is a separate pay meter for the communal bathroom⁷. There is a further room, which did not have a sink or meter, and was not let. The layout plan also indicates three fire zones with means of escape. Other photographic evidence includes lockable cupboards within the kitchen, non-slip flooring in communal areas, fire alarm points and signage etc, fire doors and emergency lighting, locks on bedroom doors and radiator protection.
10. Copies of an Improvement Notice⁸ and a Final Management Order (FMO)⁹, issued by the City Council, have been submitted. The effect of the latter was to transfer the management of the house to Mosscaire Housing Trust, on behalf of the Council, for a period of five years. This document confirmed that the premises was in use as a HMO at that date, but it appears not all rooms were in use at that time – “various rooms were completely full of debris..”. The Management Scheme to the FMO states that there were five tenants at the property plus the owner occupier. Assumptions were made that the number of tenants would remain the same over the management term.
11. Extensive information from the electoral register has been provided as follows: 1996-1998 five residents in each of five flats; 1998-1999 seven residents in each of seven flats; 1999-2001 four residents in each of four flats; 2001-2002 one resident; 2004-2005 eight residents; 2005-2006 five residents; 2006-2008 five residents. The appellant has summarised further evidence from the electoral register, and Mosscaire tenancy records, that list various numbers of people registered as living or being tenants at the property from 1964 to 2014¹⁰. This indicates the number of residents fluctuated from between 2 to 15 people. In addition, there is a screenshot from a TV licensing website showing four separate licences at four flats, although this is undated¹¹.
12. There was a period of stability when the property was under the management of Mosscaire Housing Trust. The accounts suggest that the occupancy was consistently at six people¹². However, the management fee information notes that the Trust was dealing with between four and five tenancies. Flat 1 had one occupant from November 2008 to October 2011. The flat was vacant until a new tenant occupied it from July 2012. Flats 2A, 3, 4 and 7 were occupied consistently from November 2008. In December 2014 the remaining five tenants were evicted, but the owner remained in residence. The premises has been vacant since 2017.
13. Finally, a letter dated 27 February 2020 from a former owner has been submitted. This states that the property has been ‘variously’ let to tenants from 1964 onwards. However, it is ambiguous in terms of numbers of residents and occupancy periods.
14. I have also had regard to contradictory evidence from interested people.

⁶ VG02.2 – Photographs of electric pay meters in 11 bedsits, VG02.5 – Photographs of sinks with water heaters in 9 rooms.

⁷ VG02.4 – Photograph of pay meter for bathroom.

⁸ Dated 28 June 2007.

⁹ Dated 2 October 2009.

¹⁰ VG05 – summary of occupation, as updated 02.04.21.

¹¹ VG07 – TV licence screenshot.

¹² VG08.

Analysis

15. The appellant states the use began on 1 December 1964. Prior to that, the premises was used as a nursing home. It is argued that the property has been occupied as a large HMO from December 1964 to December 2014.
16. I accept that the layout supports the claim that the property was in use as a large HMO with eleven letting rooms. However, it is necessary to examine evidence relating to how the premises was used, since the layout alone does not show occupation throughout the relevant period. Although the photographs also support the appellant's claim, they are a point in time and may not accurately reflect the situation prior to the improvement works carried out by the Housing Trust.
17. The evidence from the electoral register shows the number of occupants fluctuated considerably over the years. It is maintained that this evidence shows minimum occupation, as it is suggested that some of the tenants living in the building would not have been registered. Conversely, that argument casts doubt on the value of the electoral records as evidence of occupation since the appellant appears to suggest they do not provide an accurate representation.
18. The TV licence information does not assist. Aside from being undated, this relates to four occupiers only.
19. The financial information from the Housing Trust, and other documents related to the Council's management of the property, strongly indicates that the house was occupied throughout the management period by five or six people. This would place the use within the category of a small HMO¹³, which is not what the application sought. Moreover, it would not demonstrate the lawfulness of a C4 use, as the Housing Trust evidence extends to five years only.
20. The appellant accepts that it is not possible to find evidence to show that each of the eleven rooms was fully occupied, but it is claimed that this is not necessary. Nonetheless, to differentiate a large from a small HMO, it is necessary to show that the premises was occupied consistently throughout the relevant period by more than six residents, not forming a single household. The evidence before me is insufficient in this respect.
21. I afford the appellant's Statutory Declaration significant weight as sworn evidence. However, although it sets out the history of the premises, it does not provide clear evidence as to how the building was used and occupied. The data from the electoral register would be useful as corroborative evidence, if it were being used to supplement evidence of continuous occupation, such as tenancy agreements, bank statements with rental payments, or utilities bills for example. The only other information supplied is similarly incomplete and ambiguous.
22. The additional argument advanced, that compares the situation to a hotel, is not relevant since a hotel is a different use class and different considerations and tests would apply.

¹³ Class C4 of the Use Classes Order, use of a dwellinghouse by not more than six residents as a "house in multiple occupation", occupied by persons who do not form a single household, with shared facilities.

23. I find that the appellant has not shown, on the balance of probability, that a material change of use to a large HMO with 11 letting rooms occurred on or before 18 March 2010 and continued after the date of change for a period of ten years without significant interruption.
24. Given this finding, it is not necessary for me to go on to consider whether there has been any subsequent material change of use, or any other change in circumstances, that would cause any lawful established use of the premises to be lost.

Conclusion

25. 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 with 11 letting rooms 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.

Decision

26. The appeal is dismissed.

Appeal B Ref: APP/B4215/W/20/3260172

Background and Preliminary Matters

27. The appeal relates to a relatively large, semi-detached property within a predominantly residential area. The building has been vacant for several years, and prior to that it was occupied by varying numbers of tenants plus the owner. The layout remains that of a house in multiple occupation. However, I found that insufficient evidence has been provided to demonstrate the lawfulness of any such use (Appeal A).
28. The application that led to this appeal followed a previous scheme for nine one-bedroom apartments and a two-storey rear extension, which was withdrawn¹⁴. The proposal before me would provide five units in total, comprised of two one-bedroom apartments, two two-bedroom apartments and a three-bedroom apartment. The development would be accommodated within the existing building with a new single-storey rear extension.

Main Issues

29. The main issues are: (i) whether the development would reduce the availability of family housing and undermine the formation of sustainable communities; (ii) the effect of the development on the living conditions of adjoining occupiers, with regard to noise and disturbance, and privacy; and (iii) the effect of the development on the character and appearance of the area.

Reasons

Family Housing

30. The Council's strategic approach to housing development is set out within its Core Strategy (July 2012), which details the broad spatial principles guiding development across the City. Policy SP1 states that a key principle is the creation of neighbourhoods of choice, providing high quality and diverse

¹⁴ Ref 124997/FO/2019.

housing around district centres which meets local needs. The justification to the policy explains that all development should contribute to the City's aim to create neighbourhoods where people choose to live and where a good mix of housing and local services and facilities provides for people of all ages and with differing needs.

31. Policy H1 seeks to provide for a significant increase in high quality housing at sustainable locations, to address need and support growth. The policy states the mix of housing in each area will depend on the need to diversify the housing stock in more mono-tenure areas by increasing the availability of family housing, including for larger families, and the availability of other tenures to meet identified need. Outside the Inner Areas (which includes the appeal site) the emphasis will be on increasing the availability of family housing.
32. Policy H5 relates to Central Manchester and states that priority will be given to family housing and other high value, high quality development where this can be sustained. The justification references the Housing Needs Assessment (2007) and sets out that the emphasis will be on increasing the availability of family housing.
33. Against this policy background, the Council believes the wider area remains under pressure for student accommodation. A plan from the Core Strategy Policy H11, which concerns HMOs, indicates that the appeal premises was in an area where 10-19 percent of the housing was in use as HMOs, while surrounding areas were between 20-49 percent HMOs. The Council contends that the local area is at risk of becoming dominated by student or small household accommodation, tending towards a mono-culture which its strategic policies seek to avoid.
34. The development would provide a three-bedroom unit on the ground floor, with one and two-bedroom units throughout the remainder of the building. It is argued that the three bedroom unit should be considered family housing. However, the floorspace would be relatively modest and the outdoor space would be limited in terms useability given its proposed size and location adjacent to the car parking area. As such, I consider that this unit would be equally attractive to a two person household. Overall, the total development would contribute to a proliferation of apartments in the area, the majority of which would be relatively modest in size. This would not accord with the overall aim of achieving sustainability though a enabling a mix of households, including families which are important to support schools and other family-orientated community facilities.
35. I appreciate the development is not targeted towards students and there is a dispute as to whether the student housing market in Manchester has shifted north towards the city centre. Nonetheless, the overall development would be more likely to meet to the needs of smaller households than families, due to the available floorspace and limited garden facilities. It would also be removing a larger house from the housing stock which would threaten the delivery of the Council's strategic aims, which seek to increase the availability of family housing.
36. The appellant maintains that the property has never been used as family accommodation and, hence, the development would not lead to the loss of a family home. In addition, it is suggested that the proportion of one and two

person households in the area is comparable to national averages. This may be correct, nonetheless, the building has potential to provide accommodation for a large family, or an extended family, in an area where the Council is seeking to promote family housing and resist domination by particular types of residential accommodation. There is no assessment before me to show that such a use would not be viable.

37. I accept that there is likely to be demand for the proposed development, and I have had regard to the appellant's references to housing need as set out in the Greater Manchester Combined Authority Strategic Housing Market Assessment. However, there is an equal, if not greater, demand for family housing in the local area. As explained, I consider the development less likely to appeal to families.
38. The appellant indicates there is a precedent because planning permission was approved for other apartment developments in the immediate vicinity. The full balance of considerations that informed those decisions is not before me, and I am unable to make a reasoned judgement on whether or not these decisions set a precedent.
39. I conclude on this matter that the proposed development would reduce the availability of family housing and would thereby undermine the formation of sustainable communities. It would, therefore, be in conflict with the development plan, in particular, Policies SP1, H1 and H5 of the Core Strategy, which seek to create neighbourhoods of choice, through providing high quality and diverse housing to meet local needs. It would not reflect the guidance of the Council's Supplementary Planning Document 'Guide to Development in Manchester' (2007), section 7 of which complements the strategic policies through encouraging a balance of development in areas which have been impacted through a loss of family housing to flats. The proposal would not meet the aims of the National Planning Policy Framework insofar as it seeks to support strong, vibrant and healthy communities.

Living Conditions

40. The development would lead to the creation of a parking area for three cars at the rear. It would not extend across the whole of the former garden and it would not be located immediately adjacent to the building. The adjoining property, no 6, is in use as a single family dwelling and I accept that the car park would lead to activity close to the neighbour's garden, but this would be on a relatively modest scale. In addition, the neighbour's garden is fairly long and with appropriate boundary treatment, the effect of the car park could be mitigated. This could be secured through the imposition of a planning condition.
41. Moreover, the Council's description of the kinds of noise and disturbance anticipated may be more typical of public car parks. I consider it unlikely that residents of the appeal premises would engage in the types of anti-social behaviour described such as, "revving engines, slamming doors and operating car entertainment systems at all hours of the day and night". While exhaust fumes are a genuine concern, I do not consider that emissions arising from the use of a small, residential parking area would pose a significant risk to human health.

42. The Council is also concerned that the proposal would involve the enlargement of three windows to main habitable rooms, facing the gable of no 10. It is considered that this would lead to a loss of privacy for the residents of the adjoining property.
43. I saw that the rear of no 10 has very limited privacy at present due to existing windows at the appeal premises and in neighbouring properties. Although some of the windows would be increased in size, I do not consider that any increase in overlooking, real or perceived, would be material given the site-specific circumstances.
44. I conclude on this matter that the proposed development would not have a material adverse effect on the living conditions of adjoining occupiers, with regard to noise and disturbance, and privacy. It would therefore accord with Policies SP1 and DM1 of the Core Strategy which, among other things, seek to protect residential amenity and secure development that makes a positive contribution to the health, safety and wellbeing of residents.

Character and Appearance

45. The properties located towards the northern ends of Birch Polygon and Birch Grove historically had large gardens which, combined with the open space to the south and east, contributed positively to the area's character and appearance. Several parking areas have been created at the rear of the properties, resulting in the loss of landscaping. The Council is concerned that the creation of a further rear parking area would erode the positive contribution made by the remaining landscaping.
46. The area at the rear would not be entirely given over to parking and there would be adequate space remaining for a landscaping scheme. This could be secured by a suitably worded planning condition and would, in my opinion, overcome any harm to the landscape setting of the building and wider area resulting from the rear parking area.
47. I conclude on this issue the development would not have a material adverse effect on the character and appearance of the area with regard to the provision of a rear parking area. It would accord with Policies SP1 and DM1 of the Core Strategy and saved Unitary Development Plan (1995) policy DC5.1 which, among other things, seek to secure high quality housing development that has regard to the character of the surrounding area.

Other Matters

48. I understand that the appellant engaged with the Council at an early stage and, during pre-application discussions, the concerns about the principle of development were not raised¹⁵. I appreciate the appellant's frustration, but such advice from the Council is without prejudice to any decision, and this consideration carries little weight.
49. I note the comments about the conduct of the planning officer and elected members with regard to the Council's handling of the application. I am advised that this complaint has been pursued through separate channels, which is appropriate.

¹⁵ Email dated 19 November 2019.

50. The comments relating to the nature and origin of third party representations are also noted. The views of interested people are considerations which I have taken into account. These generally reflect the reasons for refusal, which I have addressed above.

Conclusion

51. The development would provide five units of accommodation, including one three-bedroom unit which may be attractive to a small family, thus contributing to the local housing provision. In addition, the smaller units may contribute to low-cost housing, which may be attractive to first time buyers. It would also make use of a vacant building and would be well-located for access to facilities. However, these benefits would not outweigh the conflict with the Core Strategy policies, which I have summarised above. There are no other substantive material considerations that would indicate the decision should be made other than in accordance with the development plan.
52. For the reasons given above I conclude that the appeal should be dismissed.

Decision

53. The appeal is dismissed.

Debbie Moore

Inspector