
Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2021

Appeal Ref: APP/P4605/X/21/3268892
88 Wiggin Street, Birmingham B16 0AH

- 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 Gagandeep Mand against the decision of Birmingham City Council.
 - The application Ref 2020/07531/PA, dated 22 September 2020, was refused by notice dated 20 November 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 the change from Class C3 to Class C4.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted. Both the appellant and the Council were contacted and given the opportunity to comment.
3. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the submissions that the use for which the LDC is sought is for 'the existing use as a 5 bed House in Multiple Occupation (HMO) (Use Class C4) as described by the Council in its decision notice. The appellant has then used this description on the appeal form. The Council dealt with the proposal on this basis and so shall I. This will not cause injustice to either side.

Main Issue

4. The main issue is whether the Council's decision to refuse an LDC to use the appeal property as an HMO was well-founded. This consideration is an issue of lawfulness which cannot take account of any matters of planning merit.

Reasons

5. On 31 December 2019 the Council confirmed an Article 4 Direction removing permitted development rights for change of use from Use Class C3 to Use Class

C4 under Class L(b) of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The Article 4 Direction came into force on 8 June 2020.

6. Section 55 of the 1990 Act defines development, in short, as the carrying out of building operations or the making of any material change of use of any buildings or land. Having regard to the appellant's photographic evidence¹, the works carried out to the property in May 2020 appear to be internal alterations only which do not materially affect the external appearance of the building. Therefore, I consider that these internal works did not amount to development by virtue of Paragraph 55(2)² of the 1990 Act.
7. The appellant contends that prior to the Article 4 Direction coming into force the property was in use as an HMO because it had been registered with the Council as such. Having regard to Section 56(1) of the 1990 Act³, development consists of a change of use, at the time when the new use is instituted. Registering the property as an HMO and carrying out internal works, despite taking place before the Article 4 Direction came into force, do not '*institute the use*' and thus do not constitute a material change of use of the building.
8. Notwithstanding that prior to the Article 4 Direction coming into force on 8 June 2020, the appellant provided notice to the Council of their intention to convert the property to an HMO and received an email from the Council in response⁴, the evidence presented by the appellant does not show, on the balance of probabilities, that the HMO use had commenced before the Article 4 Direction came into force. It therefore follows, that at the time of the LDC application, its use as an HMO was not permitted development by virtue of Class L(b) of the GPDO and therefore was not lawful.

Other Matters

9. I note the appellant's comments regarding communication with the Council. This appeal is an issue of lawfulness which cannot take account of any matters of dissatisfaction with the Council's procedural policies which should appropriately be made in the first instance through the authority's own complaints procedure.

Conclusion

10. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the appeal property as an 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.

Elizabeth Jones

INSPECTOR

¹ Email dated 260520 'HMO declaration'.

² Paragraph 55(2) states: The following operations or uses of land shall not be taken for the purpose of this Act to involve development of the land –

(a) the carrying out of the maintenance, improvement or other alteration of any building of works which –
(i) affect only the interior of the building, or
(ii) do not materially affect the external appearance of the building.

³ Section 56(1) of the 1990 Act states: For the purposes of this Act development of land shall be taken to be initiated – (b) if the development consists of a change of use, at the time when the new use is instituted.

⁴ Email dated 270520.