
Appeal Decision

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 18 November 2021

Appeal Ref: APP/Y1110/X/21/3279274
99 Howell Road, Exeter, EX4 4JU

- 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 Spencer Popham of GPG Developments against the decision of Exeter City Council.
 - The application Ref 21/0517/FUL, dated 24 March 2021, was refused by notice dated 21 April 2021.
 - 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 use of property as House of Multiple Occupation (HMO) (Sui Generis) for up to 12 persons.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. For the avoidance of doubt, the planning merits of an 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, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority.

Main issue

3. I consider the main issue is whether the council's decision to refuse to grant an LDC was well founded.

The site and relevant planning history

4. The appeal property is a substantial 13 bedroom detached Victorian villa on three floors with shared facilities and communal areas, on a good sized corner plot near the city centre. It is within the St David's Conservation Area and in an area subject to an Article 4 Direction removing permitted development rights for a change of use from Class 3 to Class 4 (houses in multiple occupation by three to six people).
5. Permission was granted for the change of use from bedsitters to form an ex-prisoners hostel in May 1977 (03/77/0324) subject to three conditions; (a) a standard 5 year time limitation; (b) an occupancy limitation of 15 people including the warden and staff; and, (c) the permission being personal to the

Stonham Housing Association Ltd. The conditions were imposed to restrict the impact on adjoining areas and to ensure the use is properly controlled.

6. Appendix 5 of the appellant's evidence is the National Criminal Justice Reference Service extract from the International Journal of Offender Therapy and Comparative Criminology which indicates that in 1977 the development was known as the 'Oakfields Project', this being a multipurpose residential centre for ex-offenders and a day centre for other members of the community with 10 long stay places for homeless men and women, a crisis unit for younger offenders and a separate group of apartments for long term residents of the hostel.
7. In 2019, the appellants acquired the property from the Home Group (formerly the Stoneham Housing Association).
8. In December 2020 an application for an LDC (20/0884/LED) was refused for the use of the property as a large HMO as there was insufficient information in respect of the number of occupiers of the building. The subsequent application which is the subject of this appeal is for an HMO for up to 12 persons.

Reasons

9. To establish lawfulness for the use of use of property as an HMO for up to 12 persons and to achieve immunity from enforcement action, it is necessary to demonstrate on the balance of probabilities that the use commenced 10 or more years before the date of the application, 24th March 2021, and has continued uninterrupted for a period of 10 years. Consequently it needs to be demonstrated that the use existed on or before 24th March 2011. The onus of proof rests with the appellant.
10. The appellant's case has been informed by two opinions from Richard Kimblin QC, with the second updating the first in order to have regard to the conditions attached to the 1977 permission.
11. It is suggested in the later opinion that the effect of the 1977 permission on the future lawful use of the premises is either to revert to the previous use as 'bedsitters' or to continue under the 1977 permission if condition (c) is removed pursuant to a s73 application.
12. The appellant's conclusion that the lawful use of the property is as an HMO and that it has not been abandoned has had regard to the journal description contained in Appendix 5. It is asserted that the property was a large HMO as the individuals occupying it were doing so as their only or main residence and the description as a hostel would indicate that basic amenities would have been shared. Additionally the room layout of the property shown in the sales particulars (appendix 7 of the appellant's statement) is indicative of an HMO.
13. Whilst the appellant states that a s73 application and an HMO licence application may result in the lawful use of the premises as an HMO, such arguments are somewhat academic as no such applications have been made to the Council, they cannot apply retrospectively and they are therefore not relevant to establishing the lawful use of the property.
14. A personal permission falls away once the recipient of the personal consent has ceased the use and the site is left without a lawful use, except where there has

- been a material change of use of the premises for over 10 years, although no such submission to this effect has been made.
15. Environmental Health records indicate that the property has been used as a hostel for ex-offenders and that it was inspected as a food/business premises every two years from 1992 until its location and was providing breakfast and cooked evening meals to its residents.
 16. The Council's Private Sector Housing Team confirms that the property has not been issued with an HMO license and that the premises have been run by a registered social landlord. Such properties are not classed as HMOs for the purpose of the Housing Act 2004.
 17. Whilst there may be characteristics associated with the hostel use that are similar to an HMO this does not in itself confirm that the lawful use of the building is as an HMO. There are aspects of the hostel use, such as kitchens that were regularly inspected by the council's environmental health team as if it were a food business/premises, that are not common in HMO uses.
 18. The reliance by the appellant on the previous use of the building as bedsits, the Appendix 5 1977 article and the more recent sales particulars as the basis for indicating an HMO use is not conclusive. As pointed out by the Council, there is no existing layout of the building in the 1977 application or in any older application, to demonstrate how the building had been used when it was in use as bedsits. It may be the case that the pre-1977 use as bedsits constituted an HMO at that time, and that such a use has not subsequently been abandoned, but the evidence about its use is not sufficiently precise and unambiguous.
 19. An application for an LDC needs to describe precisely what is being applied for, which in this case is as a large HMO for up to 12 persons. However the case to support this number is not stated. Whilst condition (b) of the 1977 permission limits overall numbers to 15, no information is provided about the number of occupiers who have typically resided in the building and whether such numbers have changed over time between 1977 and 2013. Consequently it is not clearly established that the existing lawful use of the building is as described.
 20. The appellant has not shown on the balance of probabilities that the existing lawful use of the building is as a large HMO for up to 12 persons.

Conclusion

21. For the reasons given above 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 property as House of Multiple Occupation (HMO) (Sui Generis) for up to 12 persons was well-founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

P N Jarratt

Inspector