
Appeal Decision

Site visit made on 26 April 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 16 May 2022

Appeal Ref: APP/B4215/X/22/3292416
209 Slade Lane, Manchester M19 2AE

- 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 Madj Ltd against the decision of Manchester City Council.
 - The application Ref 129262/LE/2021, dated 1 February 2021, was refused by notice dated 24 September 2021.
 - The application was made under section 192(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 12 bedroom HMO.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Madj Ltd against Manchester City Council. This application is the subject of a separate Decision.

Main Issue(s)

3. The main issue is whether the Council's refusal to issue the certificate of lawfulness was well founded. That turns on whether the appellant can show, on the balance of probability, that the change of use to a 12 bedroom HMO occurred prior to 1 February 2011 and continued for a period in excess of ten years.
4. When dealing with an appeal such as this, the burden of proof is on the appellant and the standard of proof is the balance of probabilities. Following the judgement of *Gabbitas*¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
5. Under s171B (3) of the Act, no enforcement action may be taken at the end of the period of ten years beginning with the date of a breach of planning control consisting of any breach other than the carrying out of operational development or the change of use of any building to use as a single dwellinghouse. The LDC application was submitted on 1 February 2021 and therefore the material date for the use of the property will be 1 February 2011.

¹ *Gabbitas v SSE & Newham LBC* [1985] JPL 630

6. In support of the application a range of evidence was originally submitted, including:
 - 192.com Property Report for the appeal property;
 - Zoopla rental particulars dated 2 October 2009;
 - Statutory Declaration of Mr Mustafa Al-Hussainy; and
 - Statutory Declaration of a neighbour.
7. Additional evidence was submitted during the course of the Council determining the application, including:
 - Electoral Role summary;
 - Correspondence from Housing Support team with an HMO Licence; and
 - Statutory Declaration from a former resident.
8. The Council accepts that the property has been periodically used as shared residential accommodation over the years but maintains that the evidence of continuous use as a 12 bedroom HMO for the material period is ambiguous and fails to meet the "balance of probabilities" test. The Zoopla rental details dated 2 October 2009 states that the property has 12 bedrooms whereas the 192.com Property Report of 7 December 2020 indicated 10 bedrooms. Although the Zoopla report is prior to the ten year material period it shows some inconsistency in the evidence submitted by the appellant. The 192.com report includes a number of photographs of the inside of the property, indicating shared occupancy, but does not confirm continuous use or occupation during the material period.
9. The neighbour's Statutory Declaration indicates that between approximately 2003 or 2004 the appeal property was purchased and used as individual rooms rented out to students and factory workers. Her friend occupied a room between approximately 2003 and 2007 but she did not enter any of the letting rooms. There are no details of the number of rooms or residents and it falls short of providing clear evidence of the use of the property as a 12 bedroom HMO for the material period 2011 to 2021.
10. The owner's Statutory Declaration is clear that the property was in use as a 12 bedroom HMO on 20 November 2016 and used continuously for that purpose since it was refurbished around 2017. The evidence in his Statement about the use before then is a lot less clear and recalls his 'understanding' of the use rather than clear and unambiguous evidence. He provides little evidence to actually support his declaration.
11. Finally, there is a Statutory Declaration by a former resident who rented a room at the property between 2004 and 2006. During that period he recalls that it comprised of 12 bedrooms over 3 floors which were rented on a room by room basis. The former resident confirms the names of seven people who lived there at this time but there is no clear evidence of their periods of occupation or whether they lived in the property at the same time. There is an indication that the rooms were occupied for the majority of the time by different individuals, but, importantly, there is no evidence of the number of residents after 2006, including during the material period of 2011 to 2021.

12. Correspondence from Citywide Housing Support Team dated 8 December 2020 confirms that HMO licences were issued for the property in 2007, 2012 and 2017. However, that correspondence and the 2012 Licence Ref 090814/OL2 confirm that the property is suitable for occupation by not more than 12 occupants rather than specifying that the property was used as a 12 bedroom HMO for the ten year period. Similarly, the HMO Fees 2018 document provides no evidence of actual occupation or use of the property.
13. The Electoral Roll extract identifies the residency records from 2002 to 2021 and contains names of 14 individuals who resided at 209 Slade Lane for different periods of time. It does demonstrate occupation of the property for residential purposes but is not clear evidence of continuous use as a 12 bedroom HMO.
14. Taking all these matters into account, therefore, my conclusion is that the appellant has failed to show on the evidence now before me, on the balance of probability, that the change of use to a 12 bedroom house in multiple occupation occurred prior to 1 February 2011, so as to be immune from enforcement.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect to use of the property at 209 Slade Lane, Manchester as a 12 bedroom 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.

A A Phillips

INSPECTOR