The Planning Inspectorate

Appeal Decision

Site Inspection on 23 May 2022

by Graham Self MA MSc FRTPI

Inspector appointed by the Secretary of State

Decision date: 9 June 2022

Appeal Reference: APP/E0345/X/21/3286096
Site at: 82 Brighton Road, Reading RG6 1PS

- The appeal is made by Mrs Sonia Dudhnath under Section 195 of the Town and Country Planning Act 1990 as amended against the failure by Reading Borough Council to decide an application for a certificate of lawfulness within the appropriate period.
- The application (Reference No. 210509/CLE) was dated 31 March 2021.
- The application was made under Section 191 of the Town and Country Planning Act 1990 as amended.
- The application sought a certificate of lawfulness for: "The licenced dwelling house of 82 Brighton Road Reading RG6 1PS is room let on separate, individual and unrelated Assured Shorthold Tenancies (ASTs) with up to 5 occupants each with an individual AST as per licence. The dwellinghouse has been such for an HMO for over 10 years. The dwelling house was licenced in 2019."
- In the appeal form, the development was described as: "Licenced house 82 Brighton Road RG6 1PS is room let on separate individual and unrelated AST with upto 5 occupants. Used as HMO for over 10 years".[1]

Summary of Decision: The appeal partly succeeds, to the extent that a certificate of lawfulness is issued in the terms set out in the formal decision.

Reasons

1. The background to this appeal includes a dispute between the appellant and the council about the description of the development in the application, with specific reference to the phrase "up to five occupants". The council suggested that this description was too imprecise and invited Mrs Dudhnath to change it; she did not accepted that suggestion and maintained the original description; the council then proceeded to assess the application on the basis that it referred to five occupants.

2. Certificates of lawfulness must describe whatever development is judged to be lawful with reasonable precision, one of the reasons for this being that such certificates may be needed to provide a base against which to assess any future change and whether such change would constitute development for the purposes of planning law. So I can see why the council has regarded the description "up to five occupants" as not precise enough and treated the application as seeking a certificate for five occupants.

[1] The reference to "room" (singular) is in both of these descriptions, for the application and the appeal. This appears to have been intended to be "rooms". The words "upto" and "licenced" are also reproduced here as they appeared in the application.

3. I also agree with the council's view that the evidence to support the case for five-person occupancy has some significant gaps. A particular issue concerns the room referred to as Room 3, which contains the boiler serving the whole house. The available evidence suggests that because other occupiers need to have access to this room to control their hot water or heating needs, and because of other factors such as boiler noise, it is unpopular with tenants and prospective tenants and has been difficult to let. Part of the appellant's case is that this room has always been available to let, but it does not appear to have been substantively occupied for long periods, including well over a year before the application date.

4. Some other gaps in occupancy have lasted for several months and the recent pandemic appears to have caused abnormal problems, including the imposition of six months notice, a ban on evictions and difficulties carrying out health and safety requirements. In my view it is reasonable to allow some flexibility for these circumstances when considering the continuity of use, bearing in mind that for planning law purposes, a use can continue even when it is not actively being carried on or apparent "on the ground". Within limits, the same applies to the way the property has been managed to allow for Mrs Dudhath's disability.

5. There is fairly clear evidence that the property has been used as a house in multiple occupation without any intervening use (such as reversion to a family dwelling) for more than 10 years before the date of the certificate application. Indeed, the evidence suggests that HMO use goes back to about the date Mrs Dudhnath bought the property in 1999 (Mrs Dudhnath states that the property was "bought to let in 1999" and there is no good reason to disbelieve this statement), in which case the use would have had to be abandoned, not merely ceased, for it to become unlawful by the date of the certificate application. Independent evidence for the early 2000s is lacking but landlord accreditation and inspection by an Environmental Health officer appears to confirm HMO use at least as far back as 2005.

6. What is less clear is the continuity of occupation by a specific number of occupants. Some of the evidence either way is unreliable; for example, the register of electors is likely to under-record short-stay or transient occupiers. Given the physical layout of the property and normal commercial considerations it seems unlikely that Mrs Dudhnath would deliberately aim for constant under-occupancy, although that is a possibility.

7. On balance, I judge that there is sufficient evidence to show that the use of the property as an HMO for four persons has been carried on for long enough and with sufficient continuity to gain immunity from enforcement and so become lawful by 31 March 2021. However, there is insufficient evidence to justify a finding that there has been continuous use for the required period of time as a five-room five person HMO.

8. Inspectors are obliged to consider issuing a certificate of lawfulness for development specified differently from an application where the evidence indicates this would be justified. From what I have seen and read, I consider it appropriate to do so in this case.

9. I am aware that complaints have arisen about disturbance caused by some occupiers. These complaints might have been relevant to an application for planning permission but do not have a bearing on issues of lawfulness.

Conclusion

10. For the reasons given above I conclude that the council's refusal to grant a certificate of lawfulness was not well-founded and that the appeal succeeds to the extent explained above. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

11. The appeal is allowed and attached to this decision is a certificate describing the extent of the existing use which is found to be lawful.

G F Self

Inspector

Certificate of Lawfulness

APPEAL REFERENCE APP/E0345/X/21/3286096
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 or 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 31 March 2021 the use described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 as amended, for the following reason:

The use as a house in multiple occupation by four persons had become lawful because of the length of time the use had been carried on before the date of the application, without enforcement action being taken.

G F Self

Inspector

Date 9 June 2022

First Schedule

Use of the property as a house in multiple occupation by four persons.

Second Schedule

The property at 82 Brighton Road, Reading RG6 1PS.

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 as amended.

2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful on the certified date and thus would not have been liable to enforcement action under section 172 of the 1990 Act on that date.

3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

[These notes must go on the back of the lawful development certificate itself]