
Appeal Decision

Site visit made on 14 June 2022

by Sandra Prail MBE, MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 11 July 2022

Appeal Ref : APP/B1415/X/22/3290541

Land at 62 Eversfield Place, St Leonards on Sea, East Sussex, TN37 6DB

- 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 & Mrs Febrer against the decision of Hastings Borough Council.
- The application reference HS/EX/21/00665 dated 12 July 2021 was refused by notice dated 8 December 2021.
- The application was made under section 192 (1) (a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is use of first, second and third floor as a house in multiple occupation

Summary of Decision: the appeal is dismissed

Application for Costs

1. The Appellants have submitted a claim for costs against the Council. This is the subject of a separate decision.

Preliminary Matters

2. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is the balance of probability. It is consistent with Planning Practice Guidance that an Appellant's case should be accepted if there is no evidence to contradict or otherwise make his or her version of events less than probable, provided that an Appellant's evidence is sufficiently precise and unambiguous.
3. The floor plan initially submitted with the application the subject of this appeal indicates seven rooms. This was accepted by the Appellants as an error and they substituted it with a plan showing six units and a storeroom. I saw at my site visit seven units of accommodation, including occupation of the room marked on the plan as a store.
4. The notice of refusal does not provide any reasons. The officer report recording the delegated decision making states the reason for refusal as 'sufficient information has not been provided to demonstrate that, on the balance of probability, the first, second and third floor flats have been in continuous use as a small HMO (House in Multiple Occupation) (planning use class C4) for a

period of more than ten years' and this is confirmed in the Council's submissions. There is no argument before me that the absence of a reason on the decision notice affects the validity of the refusal and I shall determine the appeal accordingly.

Main Issue

5. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

6. The main issue turns on whether the proposed development would have been lawful at the time of the application.
7. The appeal site comprises the top three floors of a five storey (including basement) terraced property located on the seafront, west of Hastings Pier and within the Eversfield Place Conservation Area. The application concerns the use of the top three floors.
8. The application form describes the existing use as 'use of first, second and third floor as a house in multiple occupation comprising six units'. Although no use class is specified in the description of development in correspondence the Appellants indicated that their intended description was for a sui-generis use and suggested amendment of the description of development to 'use of part of the building as 6 units of accommodation'. The Council declined to modify the description on the basis that the evidence did not support the application.
9. The Appellants claim that the use is immune from enforcement action as the use began on 7 December 2005 and has been continuous for more than 10 years. Having regard to section 171B of the 1990 Act (as amended) the relevant period for issuing an LDC on the basis of immunity is 10 years before the date of the application. In this case the application was dated 12 July 2021 so the relevant period began on 12 July 2011.
10. The application is supported by a sworn statement from the Appellants as owners of the site stating that the appeal site has been used as an HMO for 7 units since September 1975. I do not have an HMO licence before me but an email from the housing department of the Council states that the property has had an HMO licence for 7 units continuously since July 2006. The occupants of flats 4 and 8 provide a signed statement saying that they have been in residence for 15 and 13 years respectively and that the owners live in the ground floor flat. Signed six month tenancy agreements are provided relating to six flats for periods of time in 2019/20. The Council confirms that council tax records show 2 properties since 1 April 1993, namely 62 Eversfield Place and Ground Floor 62 Eversfield Place.
11. An Appellant's case should be accepted if there is no evidence to contradict or otherwise make his or her version of events less than probable, provided that an Appellant's evidence is sufficiently precise and unambiguous. In this case evidence of use as six units is produced in the form of a sworn statement by the Appellants. But the current use as seven units casts doubt on this. The evidence from tenants concerns only 2 flats and the tenancy agreements before me do not cover 6 units for the continuous relevant period. The onus of proof rest firmly on the Appellants and I conclude that applying the balance of probability test it has not been discharged in this case.

12. I conclude for the reasons given above, on the evidence now available, that the Appellants' evidence is not sufficiently precise or unambiguous to show either immunity from enforcement having regard to section 171B time limits for enforcement action (or that there has been a change of use amounting to permitted development). The Council's decision not to issue an LDC was well - founded and the appeal should not succeed.

Formal Decision

13. The appeal is dismissed.

S. Prail

Inspector