



Appeal Decision

Site visit made on 18 July 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2022

Appeal Ref: APP/D1780/X/21/3289415

4 King George Avenue, Regents Park, Southampton SO15 4JE

- 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 Lars Warming against the decision of Southampton City Council.
 - The application Ref 20/01146/ELDC, dated 18 August 2020, was refused by notice dated 13 August 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: Existing use as an HMO of 8 units of unrelated individuals.
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Summary of Decision

1. The appeal is dismissed.

Preliminary Matters

2. The parties opted for the appeal to be determined by means of written representations and did not identify injustice that would otherwise arise. I am content to determine the appeal on the written evidence that is already before me, and do not consider that injustice would arise.
3. The appellant, or a representative on his behalf, did not attend my scheduled site visit. On his appeal form, the appellant only considered it essential for me to enter the site as rooms have been adjusted to meet the requirements of the local authority. However, as I am only considering lawfulness, any such requirements of the local authority, or indeed the planning merits of the use of the site, are not matters before me. Accordingly, injustice to the parties does not arise from an internal site inspection having not been undertaken.

Main Issue

4. The main issue is whether the Council's refusal to grant a certificate of lawfulness for the existing use of the property as an 8-bedroom House in Multiple Occupation (HMO) was well founded.

Reasons

5. In matters such as this, the onus is on the appellant to demonstrate his case on the balance of probabilities that the property has been occupied as an 8-bedroom HMO. Accordingly, he must demonstrate that at any time during a

- continuous 10-year period, prior to the date of the appeal application on 18 August 2020 (a relevant period), the Council could have taken enforcement action against the use.
6. The appellant contends that the property has been used as an HMO of 8 units of unrelated individuals for 13 years prior to the date of the appeal application in August 2020.
 7. The appellant has provided 4 signed affidavits in support of his contention, dated 7 August 2020 and 15 February 2021 respectively. However, these affidavits only attest to periods of 6 years prior to the date of the appeal application, for the period between February 2013 and February 2017, and, for a period of 9 years prior to the date of the appeal application. Moreover, these affidavits only demonstrate on the balance of probabilities the existence of 8 bedrooms in the property, as opposed detailing precise and unambiguous evidence that the property has been continuously occupied for a relevant period by 8 occupants.
 8. The appellant has also provided a raft of tenancy agreements, albeit little attempt has seemingly been made to collate or organise this evidence to assist the appellant to demonstrate his case. The Council has attempted to provide a tabled summary of the agreements, which has not been disputed by the appellant, but the property appears to have been rented to individuals, as opposed groups, some of whom may have had rolling agreements making it difficult to identify the duration of occupancy. The tenancy agreements also do not appear to identify which room was the subject of the agreement. These agreements therefore do not provide sufficiently precise and unambiguous evidence that the property has been continuously occupied for a relevant period by 8 occupants.
 9. Moreover, tenancy agreements do not evidence a period of occupancy, only that there was an intention to occupy for a stipulated duration from a given date.
 10. A signed affidavit has also been provided by the owner of the property, dated 15 February 2021, stating that the property was purchased in May 2006 and has been owned since. At that time, the property was said to be used as 5 lettable rooms, and within two months, 2 further rooms were added and the living room converted to make a total of 8 lettable rooms. It is then stated that throughout this ownership, the property has been used as 8 lettable rooms.
 11. Whilst I accept that the property contained 8 lettable rooms, may have been licensed as such, and that the appellant contends it has then been occupied by 8 individuals, the evidence before me does not demonstrate on the balance of probabilities that the property, being the relevant planning unit, has been continuously occupied by 8 occupants for a relevant period. The absence of collated evidence to demonstrate each room, precisely and unambiguously, was occupied for a relevant period therefore casts significant doubt in my mind, as this is not demonstrated through either the affidavits or tenancy agreements.
 12. I appreciate that there is other evidence, such as invoices for works to the property and in relation to utilities as well as Council Tax. However, in considering the evidence in the round, none of the other evidence before me, either alone or in combination, demonstrates on the balance of probabilities

that the property has actually been occupied as an 8-bedroom HMO for a relevant period.

13. It remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate. As a matter of fact and degree, based upon the evidence before me, the appellant has not discharged the necessary burden of proof to demonstrate his case on the balance of probabilities and thus that the Council could have taken enforcement action against the use.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

Formal Decision

15. The appeal is dismissed.

Paul T Hocking

INSPECTOR