Appeal Decision

Site visit made on 23 August 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12TH SEPTEMBER 2022

Appeal Ref: APP/Z0116/X/22/3296703
1 Pitt Road, Bristol BS7 8TY

- 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 Alan Tonkin against the decision of Bristol City Council.
- The application Ref 21/03557/CE, dated 9 June 2021, was refused by notice dated 4 November 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 a House in Multiple Occupation used by up to seven people sharing.

Decision

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

Preliminary Matter

2. In determining whether an LDC should be granted, only matters of fact and law are relevant. Therefore, planning merits considerations are not before me in this appeal.

Background

3. The appeal property contains a substantial end of terrace, double bay-fronted residential building, in which the living accommodation is arranged over two floor levels. There are three bedrooms, a kitchen/diner, a second kitchen and a bathroom on the ground floor, with a second bathroom and a further four bedrooms, one of which is ensuite, on the first floor.

4. For planning purposes, the term 'House in Multiple Occupation' (HMO) is generally taken to mean living accommodation that is occupied by persons who do not form a single household and who share basic amenities such as toilet facilities, personal washing facilities and cooking facilities. This reflects the definition set out in s254 of the Housing Act 2004 (the 2004 Act). There was no dispute that the property was in use as a seven-person HMO at the date the application was made. This falls outside of Use Class C4 (use of up to six residents as an HMO) in the Town and Country Planning (Use Classes) Order 1987 (as amended) and is therefore a *sui generis* use.

5. An LDC is sought on the basis that the use of the property as a seven-person HMO began more than ten years before the date of the application. At s171B(3), the Act provides that no enforcement action may be taken in respect of a change of use (other than to a use as a single dwellinghouse) after the end of the period of ten years beginning with the date of the breach. Any ten-year period is relevant in this respect, not just the ten years immediately preceding the application date. The effect of s191(2) of the Act is that the use would be lawful if no enforcement action can be taken because the time for taking such action has expired.

6. The onus is on the appellant to show that the use applied for is immune from enforcement action and consequently, lawful. This is qualified by the Planning Practice Guidance section 'Lawful Development Certificates', which advises that where a Council has no evidence itself, nor any from others, to contradict or otherwise make an applicant's version of events less than probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous in order to justify the grant of a certificate on the balance of probability[1]. The Courts have confirmed that an applicant's evidence should not be rejected simply because it is not corroborated by independent evidence[2].

Main Issue

7. The main issue in this appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether the appellant has been able to show that, on the balance of probability, the use of the property as a seven-person HMO was lawful at the date of the application.

Reasons

8. The appellant's claim, as set out in three separate Statutory Declarations (SD) alongside an SD supplied by their spouse, is in summary that the property has been in continuous use as a seven-person HMO since being acquired by them in September 1993, initially being let to students and after June 2006, to people in full-time employment. The SDs were witnessed by and signed in the presence of a solicitor. As joint owners, and with the appellant having had responsibility for day-to-day management of the property since or around the turn of the millennium, these witnesses therefore provided sworn first-hand testimony in respect of the use.

9. Contemporaneous documentary evidence was exhibited with the SDs, including copies of signed and dated fixed-term Assured Shorthold Tenancy Agreements (AST). The ASTs were signed by the appellant and an individual tenant and each refer to the letting out of an individual room at the property, with the tenants also having use of shared spaces. Each AST refers to a room numbered between 1 and 7. The earliest AST is dated 12 September 2009 (room 4), with the most recent being dated 9 October 2020 and expiring on 8 April 2021 (room 2). The other ASTs each relate to the letting out of a single room numbered between 1 and 7 at the property to different individuals on one or more occasions, during the period between the above dates.

10. The appellant was unable to exhibit all the ASTs that would cover the continuous letting of seven rooms at the property to seven individual tenants

[1] Paragraph: 006 Reference ID: 17c-006-20140306.
[2] *Gabbitas v SSE & Newham LBC* [1985] JPL630.

over a period of at least ten years. They explained that many documents had been disposed of during a house move in September 2019. This is a perfectly plausible explanation. It is entirely possible that such documents would have included a number of older ASTs relating to the property. It is not unreasonable to expect that documents deemed to no longer be relevant and containing the personal information of third parties would have been disposed of at the earliest opportunity.

11. The existence of an AST does not necessarily equate to residential occupation; tenants may not take up occupation or they may leave before the expiry of their tenancy for all sorts of reasons. The available ASTs nevertheless point towards the property as having been occupied and in use as an HMO during the terms of those tenancies. They show that as many as seven individual rooms at the property were let out to unrelated individuals sharing the facilities. As the time between the date of the earliest AST and the date of expiry of the most recent AST is in excess of ten years, it also tends to indicate a pattern of such use taking place at the property at times throughout that period. This all lends support to the account of events at the property set out in the SDs.

12. The appellant also exhibited their financial records, including annual income and outgoings schedules detailing rental income obtained from the property in the period between April 2009 and March 2021. In addition, the appellant and their spouse's tax returns for the financial year ending on 5 April 2011 and for the following years up to and including the year ending on 5 April 2020, were exhibited. Analysis of the financial evidence helps to show that the use as a seven-person HMO is highly likely to have been continuous between the above dates. The levels of rental income obtained are in all likelihood considerably in excess of what might be expected if the property had been let, for example, as a single dwelling or to only a few individual tenants at a time. The rental income levels are more consistent with the property having been let to multiple tenants at the same time, on a more or less continuous basis and without any significant breaks between the tenancies, for a period of more than ten years.

13. Furthermore, the appellant exhibited correspondence from their accountants dated 24 March 2006 addressed to HM Revenue & Customs, which included a schedule describing the property as a 'seven bed semi-detached house with student tenants'. This indicates that the extent of the use of the property was already similar to that applied for by the above date. It is not unreasonable to infer from this evidence, in conjunction with the details of the rental income, that the number of rooms being let at the property is highly likely to have been constant at seven for considerably longer than ten years.

14. Taken together, the appellant's financial evidence therefore clearly points towards the use of the property as a seven-person HMO as having been continuous for a period of longer than ten years prior to the application date. Any short periods of vacancy in respect of one or more of the rooms, for example between one tenant leaving and a new tenant arriving at the property, are unlikely to have affected the continuity of the use. This evidence also means that the absence of copies of all the ASTs does not cast significant doubt on the use applied for having subsisted at the property for the required period.

15. The Council issued an HMO licence for the property pursuant to the 2004 Act, for a maximum of seven households and seven persons, on 9 January 2020. This was the first such licence issued in respect of the property, following a

licence application made in September 2018. Even so, the Council confirmed that prior to 2018 there had been no mandatory requirement for an HMO licence in respect of this type of property. The Council also acknowledged the existence of information in its records relating to the property being let to students in 1995 and 2006. As a result, the absence of an HMO licence prior to January 2020 does not weigh against the appellant's claim.

16. Besides, the appellant exhibited a copy of an application made in June 2009 to the Council's Housing Service for certification that the property met the Council's accreditation standard for privately rented accommodation. Also exhibited was correspondence sent with the application, in which the appellant described the property as an HMO, as well as accreditation certificates subsequently issued by the Council for the periods 15 June 2009 to 14 June 2014 and 3 June 2014 to 3 June 2019 respectively. I am given to understand that the accreditation scheme extended to all private rental properties, not just HMOs. Nevertheless, when viewed in the context of the appellant's other evidence, the above lends further weight to their claim.

17. The Council did not explain why the absence of a reference in Council Tax records to use of the property as an HMO should have significance when applying weight to the appellant's evidence. For instance, it is unclear how this would have made a difference in terms of assessing the amount of Council Tax due. In any event, the appellant exhibited copies of seven years' worth of Council Tax bills naming their spouse and latterly also themselves as the persons liable for Council Tax in respect of the property. On all the bills in the addressee details the Council had put '(HMO)' after the appellant's and their spouse's names. Whilst not conclusive, this provides a further measure of support for the property having been used as what would commonly be understood as an HMO when those bills were issued; there is no obvious reason why the Council would have used the 'HMO' reference otherwise.

18. Moreover, my understanding is that where rooms are let on an individual basis, as is the case in an HMO, it is the landlord who is liable to pay Council Tax not the tenants. Although no further Council Tax bills were exhibited, the appellant's financial evidence also detailed Council Tax payments made in respect of the property over a period of at least ten years. Therefore, the evidence regarding Council Tax is consistent with the appellant's claim, as there is reference to use of the property as an HMO during a ten-year period and it shows where the liability for payment rested throughout that time.

19. Accordingly, when looked at as a whole the SDs and the documents exhibited thereto represent sufficiently precise and unambiguous evidence in respect of the continuity in the use of the property as a seven-person HMO for a period of more than ten years prior to the date of the application. The witness testimony should therefore be afforded considerable weight in the absence of evidence to indicate otherwise. In the context of the totality of the appellant's evidence none of the matters raised by the Council, in particular the absence of copies in respect of all the ASTs, the background to HMO licencing and the Council Tax records, create any reasonable degree of uncertainty concerning the use that has taken place at the property over at least a ten-year period. Those matters do not contradict the appellant's evidence or make their version of events less than probable. As a result, there is nothing that materially affects the weight that should be applied to the appellant's evidence.

20. Consequently, based on the available evidence and on the balance of probability, the appellant has shown that the property has been in continuous use as a seven-person HMO for a period of more than ten years prior to the date of the application. It follows that on the application date, it was too late for the Council to take enforcement action in respect of such use.

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 the property as a House in Multiple Occupation by up to seven people sharing was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 9 June 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the available evidence demonstrates that the use began more than ten years before the date of the application and has been continuous thereafter, so that the time for taking enforcement action in s171B(3) of the above Act has expired.

Signed

Stephen Hawkins

Inspector

Date **12 SEPTEMBER 2022**
Reference: APP/Z0116/X/22/3296703

First Schedule

Use as a House in Multiple Occupation by up to seven people sharing.

Second Schedule

Land at 1 Pitt Road, Bristol BS7 8TY.

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

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

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: **12 SEPTEMBER 2022**

by Stephen Hawkins MA, MRTPI

Land at: 1 Pitt Road, Bristol BS7 8TY

Reference: APP/Z0116/X/22/3296703

Scale: Not to scale