

Appeal Decision

Site visit made on 5 September 2022

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 5 October 2022

Appeal Ref: APP/N4720/X/22/3300323

34 Cross Flatts Parade, Cross Flatts, Leeds LS11 7JL

- The appeal is made by Thomas Light of Premo Property Ltd under section 195 of the Town and Country Planning Act 1990 against a refusal by Leeds City Council to grant a lawful development certificate.
 - The application Ref: 22/01578/CLP, dated 2 March 2022, was refused by notice dated 28 April 2022.
 - The application was made under section 192(1)(a).
 - The development for which the certificate is sought is the proposed use of the house "as a 6-person house in multiple occupation (HMO) in use class C4".
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Application for costs

1. The appellant's application for costs against the Council is dealt with by a separate decision.

Appeal decision

2. The appeal is allowed and attached to this decision is a lawful development certificate relating to the use proposed in the application, which I consider would be lawful if instituted at the time of the application.

Reasons for the appeal decision

3. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the proposed use if instituted at the time of the application. The planning merits of the use are not relevant to the appeal and there is no planning application before me.
 4. The application proposes an increase in the number of residents in the HMO at 34 Cross Flatts Parade from five to six, each of whom would occupy single-person bedrooms as shown on the application plan. This would be achieved by adding a sixth single-person bedroom to the five previously approved, by converting two storerooms in the basement to an additional en-suite bedroom. The appellant maintains that this proposal is excluded from the definition of development requiring planning permission.
 5. The Council refused the application for the following reason: -
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"The Local Planning Authority considers that the proposed development ... would not constitute permitted development due to the proposed development being in direct legal contravention of the original planning permission 20/00803/FU. As such the certificate should be not be *[sic]* granted."

6. The Chief Planning Officer's report, which the Council rely on in this appeal, contains a fuller explanation as follows: -

"The LPA accept that there is no material change of use, through the proposed increase of the bedrooms from 5 as existing to 6. However, the authority do not consider that the proposal is lawful, due to the fact that this proposed development would be in contravention of the original permission, 20/00803/FU, in particular the imposed condition 2 (CPLAN) which required the development to be in compliance with the approved plans. The existing HMO including the floor plan arrangements were determined to accord with the development plan at the time of determination, as per Section 38(6) of the Planning and Compulsory Purchase Act, which states that for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan, unless material considerations indicate otherwise. Therefore, the LPA agree that a deviation from this set of approved plans for the HMO, through the change to the approved internal floor plans to create a 6th bedroom and en-suite at lower ground floor, would not constitute lawful development, as the new layout would no longer accord with the approved plans."

7. Planning permission 20/00803/FU dated 20 April 2020 authorised the change of use of 34 Cross Flatts Parade "from dwelling (C3) to House of multiple occupation (C4)", subject to the following three conditions: -

"1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Imposed pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.

For the avoidance of doubt and in the interests of proper planning.

3) Development shall not be occupied until the approved cycle parking and facilities have been provided. The bike store should be built in accordance with the manufactures details *[sic]*, unless otherwise agreed in writing. The facilities shall be retained for the lifetime of the development.

In the interests of highway safety."

8. The Plans Schedule referred to in Condition 2 lists the following four plans: -

Site Location Plan/Red Line/OS Plan, ref: 101, received 07.02.2020

Proposed floor plan(s), ref: 102A, received 17.04.2020

Block Plan/Layout Plan, ref: 100B, received 17.04.2020

Manufacturer's Details, ref: 103, received 17.04.2020

9. The term "C4" used in the permission refers to "Class C4 Houses in multiple occupation" in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 and states "Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"". The effect of section 55(2)(f) of the Act and Article 3(1A) of the Order is to provide that the use of this house as an HMO by not more than six residents is not to be taken to involve development requiring planning permission. There is nothing in the description of the change of use approved by planning permission 20/00803/FU or in the three planning conditions which were imposed that removes this exemption or limits the number of residents to less than six.
10. It is not disputed by the Council that the planning permission has been lawfully implemented, that the change of use has been carried out in accordance with the approved plans and that the house is now in use as an HMO for five residents. Condition 2 of the planning permission does not contain any ongoing requirements and the reason for its imposition does not suggest that it was intended to. Once the development permitted had been carried out in accordance with the approved plans, Condition 2 had been fully complied with and was satisfied for all time.
11. I therefore agree with the appellant that the proposed use is excluded from the definition of development requiring planning permission. I am satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), the appellant has been granted a lawful development certificate under section 192.

D.A.Hainsworth

INSPECTOR