



Appeal Decision

by **B S Rogers BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 February 2023

Appeal Ref: APP/B4215/X/22/3306956

148 Braemar Road, Manchester, M14 6PW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Miss Stephanie Nash against the decision of Manchester City Council.
 - The application ref 134211/LE/2022, dated 30 June 2022, was refused by notice dated 25 August 2022.
 - 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 use of the property as a small house in multiple occupation (Class C4).
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Decision

1. The appeal is dismissed.

Reasons

2. In a case of this type, the onus is on the appellant to substantiate her case, on the balance of probability. She needs to demonstrate that the use as a small house in multiple occupation (Class C4) commenced more than ten years prior to the date of the application (i.e. by 30 June 2012) and continued without a significant break for ten years.
3. Class C4 is defined in the Town and Country Planning (Use Classes) Order 1987, as amended, as "*Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".*" This latter term is as defined in S.254 of the Housing Act 2004.
4. No.148 Braemar Road is a mid-terraced, two storey terraced house, with a small rear yard and no front garden. The appellant states that she bought the property on 10 March 2017 from Northman Properties Limited. It was vacated from April to June 2017 whilst renovation work was carried out and then she commenced living there and renting out 3 rooms to unrelated friends or acquaintances. Copies of leases for each tenant have been provided from July 2017 to June 2022. To my mind, the short period for which the property was vacant for renovation does not amount to a significant break in the use of the property and there appears to be little dispute that the appellant has demonstrated a C4 use for the period of her ownership.
5. I now turn to the period from June 2012 to March 2017. The appellant has submitted a lease agreement showing that 3 tenants occupied the property from April 2016 to April 2017. There is also a statutory declaration from Conor Slattery, a director of Northman Properties Limited. He states that his company purchased the property in October 2001 as an investment property to

be rented out, indicating that there were 3 separate bedrooms within the property that were rented out, together with a common bathroom, kitchen and lounge. He goes on to state that *"Whilst from time to time various tenants have entered into rental agreements there have generally always been 3 tenants within the property subject to brief periods when one tenant has left and another tenant has been found to replace them"*.

6. The Council disputes this on the basis that its records show that, from October 2011 to April 2015, the property was occupied by a married couple responsible for paying council tax. Also, from July 2015 to March 2017 the records indicate it was occupied by another married couple and a third person. Whilst council tax records are not a definitive indication as to exactly how, and by whom, the property is being occupied, this does make the appellant's case less persuasive.
7. The Planning Practice Guidance points to the need for evidence to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. Whilst the veracity of Mr Slattery's statutory declaration has not been directly challenged, it is rather imprecise, using terms such as "from time to time" and "generally". The declaration is lacking in exact details of tenants, dates of occupation and other relevant details of how the property was let and occupied. As such, it does not provide a basis for me to conclude with sufficient confidence that the property has been in continuous use as a house in multiple occupation over the 10 years from 30 June 2012.
8. For the reasons given above, I am led to conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a small house in multiple occupation (Class C4) 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.
9. In a case of this type, the planning merits are not matters which I am able to take into account. My decision relates only to the lawfulness of the use. It does not preclude a further application to the Council should further and more compelling evidence be forthcoming.

B S Rogers

INSPECTOR