
Appeal Decision

Site visit made on 14 February 2023

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 22 February 2023

Appeal Ref: APP/Y1110/X/22/3299539
13 Devonshire Place, Exeter EX4 6JA

- 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 Ian Solkin of Havana West Limited against the decision of Exeter City Council.
 - The application Ref 22/0045/LED, dated 11 January 2022, was refused by notice dated 11th March 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended ('the Act').
 - The use for which a certificate of lawful use or development is sought is House in Multiple Occupation for seven residents (sui generis).
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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.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a certificate of lawfulness was well-founded.

Reasons

3. Devonshire Place is a narrow road, which is overwhelmingly residential and is flanked by a variety of property types. Number 13 is a very large semi-detached property that has accommodation set over 4 floors, with gardens to its front and rear. Its lawful use is as a house in multiple occupation for up to 6 people.
4. The purpose of the application is to demonstrate that the use of the property by 7 persons is lawful. It is agreed that this would represent a change of use of the property. The assessment that I have to make is whether this would represent a material change of use ('mcu'), as defined in s55(1) of the Act. If it does, then the use would not be lawful; if it does not, then it would be.
5. By way of background, the Council's Officer's report states that the site lies in an area covered by an Article 4 Direction ('A4D')¹. This controls the change of use of dwellinghouses Use Class C3² to small houses in multiple occupation

¹ Article 4 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

- (Use Class C4³). The A4D restriction was brought in to address an overconcentration of HMOs, which was harmful to community balance.
6. In an appeal made under s195, the onus lies with the Appellant to make his case on the balance of probability. This is an appeal that deals solely with the lawfulness of the development. Therefore, the planning merits of the use and planning policy relating to it, play no part on the decision.
 7. The principal piece of evidence relied upon by the Appellant is a statutory declaration that he made, dated 17 December 2021. In this, he says that Havana West Limited, of which he is a Director, purchased the appeal site in 2007, since when it has been let to students. Up to 2020, this was to 6 students.
 8. Following an inspection by a housing officer, the Appellant says he was advised that should he wish to increase the number of tenants to 7, the officer would have no objection. As a result, the property was let to 7 students for the 2020-2021 academic year and had continued to do so during that part of the academic year to the date of his statutory declaration. The statement says he intended to apply for a new HMO licence, but this was made difficult by the Covid pandemic. The declaration ends by saying that neither he, nor the letting agents, received any complaints regarding the property or its occupants for the last two academic years.
 9. I give substantial weight to the declaration and, in the absence of any evidence to the contrary, I take what is stated to be the case.
 10. The basic approach is that, for a mcu to have occurred, there must be some significant difference in the character of the activities from what has gone on previously, as a matter of fact and degree.
 11. Here, that the property had been occupied by 7 students for some time prior to the date of the certificate application is an important factor in my consideration. In saying this, I do not condone the potential breach of planning control and would point to the opportunity to make an application for a certificate of lawful proposed use⁴ to ascertain whether a use might be lawful. Nonetheless, that the property has been so used allowed an opportunity for any actual effect on the character of the property and the area to be assessed.
 12. Whilst it might be heartening to find that the neither the Appellant nor the letting company had received any complaints, I give this limited weight. It is more than probable that residents would not know who the owner and letting agent were, or where they were based. In this regard, I note that the Appellant's address is a considerable distance away.
 13. The Council's Officer's report states that 21 objections to the application were received. The Council did not provide copies of these, but the report gave a précis of their content. It says that "the majority of comments raise concern about the impact on the character of the area and disruption from student behaviour, such as noise, anti-social behaviour, rubbish, and parking. There is also a comment regarding larger HMOs (those with seven or more bedrooms) creating more harm than smaller HMOs due to the number of residents".

³ ibid

⁴ S192 of the 1990 Act

14. In his statement, the Appellant has provided what he purports are quotes from those 21 representations. As the Council did not query these, I take them to be correct. Many of the comments are written in the future tense and, as the Appellant says, this indicates that the increase of one occupant that had occurred was not specifically commented on. Whilst all the correspondents share a dislike of the effects that they say students have on the area, the comments are generic, rather than specific to the increase by a single student and how this has led, and would continue to lead, to a change in the character of the property or area that would amount to a mcu.
15. The Officer's report states that "any increase in the number of people living at the property would probably result in a corresponding increase in general activity and comings and goings". It considered the application on its merits, citing the anti-social behaviour raised by the objectors.
16. As there is one additional person, it is axiomatic that there are additional comings and goings. I am aware that the onus lies with the Appellant to make its case; however, the Council does not explain how the increase in the number of occupants of the property by one would lead to a change in the character of the property or area that would be material. The Appellant has made a robust case on the balance of probability that there has been no material change of use. Thus, the Council's case does not make the Appellant's claim less than probable.
17. Therefore, on the balance of probability, I find the Appellant's case to be precise and unambiguous and that this demonstrates that a mcu has not resulted from the presence of an additional person at No 13.

Conclusion

18. 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 House in Multiple Occupation for seven residents (*sui generis*) 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.

Roy Curnow

Inspector

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 11 January 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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:

It has been demonstrated on the balance of probability that the use of the property by 7 persons would not amount to a material change of use as defined by section 55(1) of the 1990 Town and Country Planning Act (as amended).

Signed

Roy Curnow

Inspector

Date: 22 February 2023

Reference: APP/Y1110/X/22/3299539

First Schedule

House in Multiple Occupation for seven residents (sui generis)

Second Schedule

Land at 13 Devonshire Place, Exeter EX4 6JA

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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 22 February 2023

by Roy Curnow MA BSc(Hons) CMS MRTPI

Land at: 13 Devonshire Place, Exeter EX4 6JA

Reference: APP/Y1110/X/22/3299539

Scale: Not to scale

