



Appeal Decision

Site visit made on 14 February 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

Appeal Ref: APP/M3835/X/21/3279523

Castle Residence, 6 Windsor Road, Selden, Worthing BN11 2LX

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr M Strom against Worthing Borough Council.
 - The application Ref AWDM/1270/20 is dated 11 August 2020.
 - 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 described as: Existing use for the provision of housing for those in need of emergency accommodation (temporary).
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Summary of Decision

1. The appeal is dismissed.

Preliminary Matter

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.

Main Issue

3. The main issue is whether the appellant has demonstrated their case for lawfulness on the balance of probabilities.

Reasons

4. In matters such as this, the onus is on the appellant to demonstrate their case on the balance of probabilities that the property has been occupied for the provision of housing for those in need of temporary emergency accommodation. Accordingly, the appellant must demonstrate a continuous 10-year period, prior to the date of the appeal application on 11 August 2020 (a relevant period), of use.
5. The site comprises a two-storey semi-detached property. The evidence before me is that the previous lawful use was as a guest house with private owners' accommodation/flat. The appellant purchased the site in November 2019 and there are currently 14 letting rooms as well as 2 kitchens for communal use.

6. The appellant contends the use for housing for those in need of temporary emergency accommodation has taken place continuously since at least 2001. It is contended the use is a sui generis use, being a Latin term meaning in a class of its own. This has however led to some ambiguity as to the precise nature of the use. The appellant does not consider the use to be that of a large House in Multiple Occupation (large HMO) as the character of the unit is different.
7. I am however not convinced that the use as temporary emergency accommodation, which sees occupant's staying anything from 1 night to over 2 years, is different in character from a student or young professional occupying a room and sharing communal facilities. The appellant's assertions concerning the character of the use are vague, which as a matter of fact and degree do not demonstrate the use materially differs from that of a large HMO. I however recognise that a large HMO is also a sui generis use, but there remains a lack of precision regarding the use.
8. The appellant has then provided evidence to support his case in the form of correspondence from the Council's housing accommodation officer and landlord support coordinator, neighbouring occupiers, lists of guests and related councils and tenancy dates, amongst other things. None of this is however in the form of a sworn statement.
9. There is then contradictory evidence before me, not least from the previous owner of the site, who contends that it was bought, operated and then sold on the understanding it was a guest house. Until 2010, it is said there were a mix of what are described as typical guests together with guests referred by local authority housing departments. Since 2010, guests were only taken from local authorities, but the site was always run as a guest house, and it is contended that at no time was it an HMO.
10. Following the purchase of the site the appellant undertook works to convert the flat which were completed in around March 2020. Even if I were to unwaveringly accept all the evidence in support of the appellant's case, including that the flat was in ancillary use to the guest house, its conversion resulted in an increase of 3 rooms making a total of 14 letting rooms. There is also the provision of 2 communal kitchens as well as toilet/bathing facilities. It is therefore necessary to consider whether the conversion resulted in an intensification of the use of the site.
11. The appellant contends that there is an HMO licence for 14 people. It is said that the former arrangement had the capacity to accommodate a similar number of occupants, as rooms on occasion had up to 3 people. However, there is very limited evidence to support this, and it is conceded that bookings would still be made under one name, which may influence statistics. There is accordingly very limited evidence to persuade me that the conversion has not resulted in a material increase in the number of occupants at the site.
12. This in turn could lead to both on-site and off-site effects that result in a use of materially different character, also noting the comments from interested parties about anti-social behaviour. As a matter of fact and degree, the appellant has not demonstrated there to not be a materially different character arising from the conversion, or indeed simply the use undertaken since the appellant purchased the site. Moreover, there has only been an HMO licence issued since the appellant purchased the site, which I consider to be telling despite the differing licensing and planning regimes.

13. In considering all the evidence in the round there is contradictory evidence concerning the historical use of the site as well as that pertaining to a relevant period. The appellant's case is vague in parts and there is no sworn evidence before me to which I can attach considerable weight. The previous lawful use of the site was that of a guest house. There may or may not have then been a material change of use in/around 2010, and, again since the appellants purchase of the site and/or the early 2020 conversion works and issue of an HMO licence. This all culminates to cast significant doubt in mind about the use for which certification for a relevant period is sought.
14. 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 a case on the balance of probabilities.

Conclusion

15. For the reasons given above I conclude that the appellant has not demonstrated their case for lawfulness on the balance of probabilities 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

16. The appeal is dismissed.

Paul T Hocking

INSPECTOR