



Appeal Decision

Site visit made on 7 March 2023

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 March 2023

Appeal Ref: APP/W0734/X/22/3306250 59 Crescent Road, Middlesbrough TS1 4QP

- 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 Faraz Khaliq against the decision of Middlesbrough Council.
- The application Ref 22/0100/CLU, dated 11 February 2022, was refused by notice dated 12 April 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 the use of the property as 3 self-contained flats.

Decision

1. The appeal is allowed and a Lawful Development Certificate is attached below.

Background information

2. The appeal site is a two storey, terraced dwellinghouse located in a primarily residential area. There are some shops in the locality along Crescent Road, including a convenience store, a butcher's, a phone repair shop and some other commercial uses. Until 2017 the property had been occupied as a single dwellinghouse in Class C3. It is indicated that it was then converted to 3 self-contained flats and the works were completed in 2017 of that year. The flats that were subsequently let to different tenants, some of whom were students at Teesside University.
3. The current layout is set out in the appellant's appeal statement and the Council has not questioned the submitted plans. Flat No 3 occupies the ground floor and comprises a lounge, a kitchen and combined dining area, two bedrooms and a bathroom. Flats Nos 1 and 2 are located on the first floor and each is shown to comprise an open plan lounge, a kitchen, a bedroom, and a bathroom.
4. There is no dispute between the Council and the Appellant that, between September 2017 and the date of the LDC application (11 February 2022) each of the 3 flats have been in continuous residential use. This is evidenced by the Appendices to this appeal and the application submissions. It is contended, therefore, on behalf of the Appellant that the use of the property as 3 separate flats is lawful and cannot be enforced against.

5. However, the LPA is of the opinion that, by virtue of the fact that the individual flats are occupied by students, they are a *Sui Generis* Use, as opposed to falling within Use Class C3. The LPA considers, therefore, that the 10 year rule should apply, as opposed to the 4 year rule.

6. Following the refusal of the LDC the Appellant sought to engage with Council Officers. This is in line with the Planning Inspectorate's 'Procedural Guidance' which states that '*The Local Planning Authority should have constructive discussions with the applicant and, if it has any concerns, give the applicant the opportunity to amend the application before it is decided. This should help to avoid the need to appeal*'. On behalf of the appellant the relevant legislation was set out to the Council, in support of the contention that the relevant period for immunity was 4 years and not 10.

Reasons

7. An appeal relating to a Certificate of Lawful Use or development (LDC) is confined to the narrow remit of reviewing the LPA's decision and Section 195(2) of the Act requires an assessment to be made as to whether the refusal of the application is, or is not, well-founded. The assessment is based on whether or not the proposed development, for which the certificate is sought, would have been lawful at the time of the application.

8. Firstly, there is no dispute between the Appellant and the LPA that all three flats have been in residential use and lived in by various student tenants for a continuous period of 4 years leading up to the LDC application. The dispute is whether the use of each flat has been in '*Residential Use Class C3*', or as '*Student Accommodation*' in a '*Sui Generis*' use.

9. The case of *Gravesham BC v SoS & O'Brien 8/11/82 (Gravesham)* established that a 'single dwellinghouse' was defined as one which provided all of the necessary facilities required for day-to-day domestic existence. It also found that periods of non-occupation did not necessarily deprive the building of its essential lawful residential use.

10. In this case it is evident that the works carried out to the property in 2017 had resulted in three separate flats. The plans indicate that each flat had all of the necessary facilities referred to in *Gravesham*. The courts have also held that occupancy of a dwellinghouse by a certain type of tenant is in no way determinative as to whether a material change of use has taken place. I agree, therefore, with the Appellant's contention that simply because a self-contained flat is occupied by an individual who is a student does not necessarily result in a change of use away from a Class C3 use.

11. I also agree that individual flats created by a conversion are capable of being immune from enforcement action under Section 171B(2), so each residential unit created is subject to the 4-year rule. This is because the effect of the conversion is to change the use of a single property or dwelling house into several parts, each of which is then in use as a single dwellinghouse. This was confirmed by the courts in the case of *Van Dyck v SSE [1993] J.P.L 565 (CA) (Van Dyke)*.

12. I acknowledge that 'student accommodation' can be a '*Sui Generis*' use. The main examples of such a use usually take the form of student halls of residence or converted buildings which house students in single rooms or shared units, as well as providing other

communal facilities. However, it is equally the case that students regularly share dwellinghouses in a variety of ways, including when in use as Houses in Multiple Occupation (HMOs). In such cases, subject to the HMO regulations and permitted numbers of occupants, these properties remain in residential use.

13. For student accommodation to be definitively classed as '*Sui Generis*' there need to be material differences in that use from the normally recognized residential use of separate flats being occupied in Class C3. Whether or not there are such differences must be assessed on a case-by-case basis, as a matter of fact and degree.

14. The appeal property is clearly split into 3 self-contained flats, each with its own separate access. The Council has not disputed the details of the conversion and nor does it disagree that there are 3 separate units. The layouts as referred to above clearly meet the '*Gravesham Tests*' in that they have all of the characteristics of a dwelling house. It is also the case that there are no shared communal facilities related to the use which might normally be found in a student residence.

15. As indicated on behalf of the Appellant, the flats are currently occupied by student tenants. However, they could equally be occupied by any other group of individuals who were not students or a combination of students and non-students. The normal residential characteristics of usage would be the same whether the property was occupied by a number of students or others, or indeed a mix of the two. None of the converted flats have any specific characteristics or facilities normally associated with a '*Sui Generis*' student accommodation use.

Conclusions

16. As a matter of fact and degree, therefore, it follows in my view that the appeal property comprises 3 separate self-contained flats falling within the Class C3 residential use. It follows that the immunity period in relation to whether or not enforcement action can be taken against the use is four years and not 10 years. In conclusion I find that the Council's decision not to issue a LDC was unsound.

Formal Decision

17. The appeal is allowed, and a Lawful Development Certificate is attached below.

Anthony J Wharton

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 11 February 2022, the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken against the use being carried out.

Anthony J Wharton

Inspector

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First Schedule

The use of the property as 3 self-contained flats.

Second Schedule

59 Crescent Road, Middlesbrough TS1 4QP

Notes:

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

It certifies that the development described in the First Schedule, at the property specified in the Second Schedule, was lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the development described in the First Schedule; to the property specified in the Second Schedule and as shown on the Location Plan ref TQRQM22041081236186 and the Floor Layout Plans entitled 'Flat 1; Flat 2; Flat 3 (rear); Flat 3 (front)', submitted with the LDC application dated 11 February 2022.

Any other development or use which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.