
Appeal Decision

by S M Watson BA(Hons) MCD MRTPI

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

Decision date: 24 April 2023

Appeal Ref: APP/Q3060/X/22/3302096
234 Alferton Road, Nottingham, NG7 3PE

- 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 Herbajan Singh against the decision of the City of Nottingham Council.
 - The application Ref 20/01498/PCLE dated 21 July 2020, was refused by notice dated 29 April 2021.
 - 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 a house in multiple occupation (C4).
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The application form says that the existing use is Class C3 but it is clear from the full documentation that the application was for a lawful development certificate for an existing C4 use.

Reasons

3. The main issue is whether the Council's decision to refuse the LDC was well founded. This turns on whether there is sufficient evidence to demonstrate that the dwelling was occupied as a C4 HMO for the relevant period.
4. The change of use from a single dwelling (Use Class C3) to a House in Multiple Occupation (HMO) for up to six residents (Use Class C4) is normally permitted development under the terms of Schedule 2 Part 3 Class L of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). However, the Council made an Article 4 Direction which came into force on 11th March 2012 removing this permitted development right.
5. Section 171B of the Act sets out the relevant time limits for enforcement action. The Council says that the requirement is to demonstrate use for a 4-year period, as specified in s171B(2) of the Act. However, that only applies where there has been a breach of planning control consisting of the change of use of any building to use as a single dwellinghouse. This case, however,

concerns use of a dwellinghouse as an HMO. In the *Use Classes Order*, Class C3 is labelled 'Dwellinghouses', whereas Class C4 is labelled 'Houses in Multiple Occupation', reflecting the fact that it relates to a different use, even if the property remains a dwellinghouse in physical terms (as per *Gravesham*¹). Accordingly, s271B(2) does not apply. It is s171B(3), which applies as it specifies a ten year period for 'any other breach of planning control'.

6. Nevertheless, as the Article 4 direction only came into force on 11 March 2012, the appellant would not have to show that the use was in existence for a 10-year continuous period. He would only have to show that it already existed by the date when the permitted development right was withdrawn. Had it been an HMO by that date, the lawful use would still exist providing that the HMO use had not been subsequently changed or abandoned. However, there is no claim of an HMO use as early as this date.
7. Notwithstanding the above, the Council's decision notice says that insufficient evidence had been provided to establish a continuous C4 use for 4 years prior to the date of the application. The appellant has not disputed the Council's evidence. Nevertheless, that is the wrong period. Even if the appellant could demonstrate 4 years, that would not make the use lawful.
8. The onus of proof is firmly on the appellant to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate. Overall, I find that the appellant's evidence, on the balance of probabilities, does not meet this requirement. As with all LDC applications, it is open for fresh applications to be made if, for example, other evidence comes to light.

Conclusion

9. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "a house in multiple occupation (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.

Ms S Watson

INSPECTOR

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142