



Appeal Decision

Site visit made on 1 June 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th June 2023

Appeal Ref: APP/Y1110/X/23/3316675

6 Gladstone Road, Exeter, Devon EX1 2EE

- 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 Ben Davies against the decision of Exeter City Council.
 - The application Ref 22/1400/LED, dated 4 October 2022, was refused by notice dated 3 February 2023.
 - 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 Existing use of upper floor flat as Small HMO (Use Class C4), limited to 3no. occupants.
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Decision

1. The appeal is dismissed.

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. 6 Gladstone Road ('No 6') is a small, mid-terraced property. It is located at the edge of an area of narrow streets flanked by similar properties. Across Gladstone Road it faces an area of larger developments, including a hospital and supermarket.
4. The evidence shows that the property has a lawful use for 2 flats, by virtue of a certificate of lawful use issued by the Council. A drawing submitted with the appeal shows there to be a one-bedroom flat on the ground floor, although I did not enter this. Stairs from the ground floor lead to the appeal site. This was originally described in the application as being on the upper floor. This was incorrect. The flat that is the subject of the appeal is set over the first and second floors. Were the appeal to be allowed, the description of what was being applied for would have had to have been changed to reflect this.
5. The flat has two bedrooms and a living area on the first floor, with a further flight of stairs leading to a bedroom, kitchen and shower room on the second floor.
6. The site lies at the edge of, yet within, an area which is affected by the terms of an Article 4 Direction ('A4D'). This covers a large swathe of the city and precludes the change of use of properties from Class C3 to Class C4 of the

Town and Country Planning (Use Classes) Order 1995 ('UCO') that would otherwise be permitted development¹. That is to say, from the use of a property as a dwellinghouse to a House in Multiple Occupation ('HMO'), which is defined in the UCO as 'Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"'.

7. The A4D was introduced as a result of an increase in the number of HMO properties in the area causing an imbalance to the communities in which they are located. Its requirement that planning permission is sought for a change between Use Classes C3 and C4 only applies where the result is a material change of use ('mcu'). If the change of use between uses is not material, then it is not development within the meaning of s55(1) of the Act.
8. In this case, the Appellant seeks a certificate for the use of the upper floors as a HMO for up to 3 people. In its previous dwellinghouse form, it was used by 2 people. He puts his case succinctly in paragraph 4.5.3 of his statement of case: "the focus must be on whether the addition of 1 no occupant, to a maximum of 3 no occupants is material". It is for the appellant to make out his case on the balance of probabilities.
9. I have been provided with a copy of an appeal decision² relating to a similar certificate application at 42 Hoopern Street, Exeter for the change of use of C3 dwellinghouse to C4 small HMO limited to 3 residents. That case differed in what was sought was a certificate of proposed development, under s192 of the Act, rather than a certificate of existing use, as is the case before me. Notwithstanding this, that appeal decision has relevance and is a material consideration in my assessment. However, decisions on applications for certificates of lawfulness have to be made based on the individual and unique circumstances associated with each case.
10. The Hoopern Street case has parallels with the one before me. Based on the cases put to him, the Inspector in the Hoopern Street appeal found that there would not have been a mcu and allowed the appeal. However, as what is before me is an application for a certificate of existing use, the effects of the change of use, since its commencement in September 2022, can be gauged. In the Hoopern Street case, they could only be estimated, and there the Inspector found that the Council did not provide enough evidence to show that there would be a mcu.
11. In this appeal, I have been provided with a third-party representation, from an immediate neighbour to No 6, that was made at the application stage. They said that they have lived adjacent to No 6 since 2017, so have witnessed the character of the property before and after changes made in 2022. The representation states that there was no spare room previously, but that the bedroom to serve the additional occupant was formed through the sub-division of the communal room. This was not countered by the Appellant. They say there has been an increase in noise and disturbance from the property, and that this has been exacerbated by the decrease in size of the communal space. In addition, they have experienced problems with rubbish and increased pressure for parking spaces since the change of use.

¹ Schedule 2, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

² APP/Y1110/X/22/3293554

12. In correspondence with the Council, at the application stage, the Appellant highlighted that only a single representation had been made. However, it is not the case that multiple representations have to be made to demonstrate a change in character. That this objection was made after the application was lodged with the Council, and not beforehand, does not surprise me. To my mind, the application would likely have provided a focus for the third party to make comments on the effects of the changes at No 6. Whilst the representation refers to the use commencing in "early 2022", rather than September 2022, this does not detract from its worth. However, I am told that each property is restricted to two parking permits, so I find it unlikely that there has been any great effect from increased traffic movements from the site.
13. Notwithstanding this last point, this first-hand evidence, allied to what I saw at my site visit, carries great weight in my deliberations.
14. The property might have been suited to, or used by, a small family prior to the works being undertaken. However, for the reasons given above, I find that following the undertaking of the internal works its use by three people as a small HMO has resulted in a mcu. Given the terms of the A4D, there is no permitted development right for this mcu and, therefore, the change is not lawful.
15. The parties have both provided evidence in respect of the number of HMOs in the area. However, as I have found that there has been a mcu, I do not need to go further on that matter.
16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of existing use of upper floor flat as Small HMO (Use Class C4), limited to 3no. occupants 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.

Roy Curnow

Inspector