



Appeal Decision

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28TH July 2023

Appeal Ref: APP/Y0435/X/22/3296338

84 Milton Road, Broughton, Milton Keynes, MK10 9LR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Tim Petty against the decision of Milton Keynes Council.
 - The application ref 21/03828/CLUE, dated 23 December 2021, was refused by notice dated 17 February 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 a dwelling as an HMO for up to 6 people.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the existing use which is considered to be lawful.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the required information is included with the application and appeal documents, a decision can be reached on the papers. The planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence and relevant planning law.
3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 3, Class L grants planning permission for a change of use from a dwellinghouse (Class C3¹) to a small HMO (Class C4). However, on 29 December 2010 a Direction under Article 4(1) of the previous GPDO came into force through the council's administrative area. The Article 4 Direction withdraws permitted development rights for a change of use from C3 to C4, meaning that express planning permission will be required for this type of development.
4. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Order) provides for the use of a dwellinghouse as a "house in multiple occupation" (small HMO) by not more than 6 residents; that is up to 6 unrelated individuals who share basic amenities such as a bathroom and kitchen. There is no dispute that the previous use of the property was a single dwellinghouse.

¹ Use as a dwellinghouse (whether or not as a sole or main residence)—(a) by a single person or by people living together as a family, or (b) by not more than six residents living together as a single household (including a household where care is provided for residents).

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. This turns on whether the appellant can show that the lawful use sought has continued for 10 years prior to the date of the application, that is 23 December 2021, without any other intervening uses so as to be immune from enforcement action in accordance with s171B(3) of the Act.

Reasons

6. An application under Section 191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land is lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
7. The council considered that insufficient evidence had been submitted with the application to establish that the property had been in continuous use as a C4 HMO for the requisite period. I note that an application for an LDC for the use of the dwelling as an HMO for up to 5 people has been subsequently issued due to the additional evidence that had been supplied by the appellant. This additional evidence also forms part of the submissions for this appeal.

The evidence

8. The appellant has submitted the following documentary evidence:

A statutory Declaration by Timothy John Ross Petty (the appellant) of 20 Grove Park, Tring Hertfordshire HP25 5JS, dated 21 December 2021 signed by Pictons Solicitors LLP, states that Mr Petty has owned the property since 28 June 2006.

Confirmation of purchase of 84 Milton Road dated July 2006.

Email from Jacqueline Perrett dated December 2021.

Extracts of tax returns with accounts for the years 2010/2011 to 2020/2021.

Copies of tenancy agreements for the periods between June 2009 and March 2012. Screen shots of the Assured Shorthold Tenancies from 2010-2020.

Copies of HMO licenses issued by the Council.

Assessment

9. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant and the test of the evidence is the balance of probabilities. The appellant's own evidence does not have to be corroborated by "independent" evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate. This is on the basis that it is sufficiently precise and unambiguous.
10. The evidence shows that the appeal property was bought by the appellant in June 2006 and that from 2006 to 2017 the property was managed by Mr Petty and Ms Perrett as an HMO. After 2017, the property was managed solely by Mr

Petty. Mr Evans is listed as being a tenant from 1 October 2007, but he appears to be the sole tenant until 13 October 2009 when Ms Golden appears on a tenancy agreement. Mr Seal is listed as joining the household on 7 December 2009, followed by Mr Jackson on 16 January 2010 and Mr Saddington on 30 January 2010. To supplement the tenancy agreements and the statutory declaration, a tax return is provided for the year April 2010 to April 2011, and this shows the property as generating an income.

11. Tenancy agreements for the occupation of various rooms within the property have been provided and these detail periods of residency for 23 individuals between June 2009 and March 2012. Screenshots of tenancy agreements displaying dates and names are provided for the occupation of the property from 2010 to 2020. The screenshots show the 'date modified' against each named tenant with the earliest being 2 October 2010 progressing through yearly to 21 January 2020. This is supported by copies of tax returns which show a variable rental income between 2010 and 2021. While I acknowledge that there are some shortfalls in rental income over the 10 years, HMOs often house tenants on a short-term basis and there may be times when rooms may not be occupied. Unless there is a change of use of the property and that use is material, the property will remain in use as a Class C4 HMO.
12. The appellant has also provided copies of HMO licences issued by the Council for the property. These licences are for the property to house 5 tenants during the periods between October 2013 to October 2018 and November 2018 to November 2023. A further licence was issued in July 2021 for the property to house 6 tenants for a period of 2 years, 4 months and 9 days.
13. Overall, from the submissions, I have no reason to dispute that there has been a material change of use of the property from a single dwellinghouse to a small HMO (Class C4). While there is no precise date, from the evidence before me, and in the absence of any evidence to the contrary, I find that on the balance of probabilities, the change of use of the appeal property to a C4 HMO began prior to the Article 4 Direction coming into force on 29 December 2010.
14. Therefore, I am satisfied that, on the balance of probabilities, the property has been in use as a small HMO (Class C4) and has operated as such on a continual basis, without any intervening uses for more than 10 years before the date of the LDC application.

Conclusion

15. 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 the use of the dwelling as an HMO (Class C4) 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.

S A Hanson

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 23 December 2021 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:

The use of the appeal property as a small HMO (Class C4) has operated as such on a continual basis for the requisite time, without any other intervening uses, up to and including the LDC application date which was 23 December 2021.

Signed

S A Hanson

Inspector

Date: []

Reference: APP/Y0435/X/22/3296338

First Schedule

The use of a dwelling as an HMO (Class C4) for up to 6 people.

Second Schedule

Land at 84 Milton Road, Broughton, Milton Keynes MK10 9LR

IMPORTANT NOTES – SEE OVER

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 described in the First Schedule taking place on the land 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 use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: []

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Scale: Not to Scale

