



Appeal Decision

Site visit made on 25 July 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2023

Appeal Ref: APP/P4605/X/23/3315594

7 Brookvale Mews, Birmingham B29 7HP

- 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 Mohammad Hassan against the decision of Birmingham City Council.
 - The application ref 2022/03419/PA, dated 24 April 2022, was refused by notice dated 29 July 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 a C4 small HMO.
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Decision

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

Preliminary Matters

2. The appellant has submitted a number of documents with the appeal submission, including full copies of tenancy agreements and invoices covering a ten year period. The Council objects to the submission of these documents on the basis that they were not included in the application submission for their consideration and therefore to accept their submission as part of the appeal would conflict with the *Wheatcroft*¹ principles.
3. The Procedural Guide: Planning Appeals – England states that if an applicant thinks that amending their application will overcome the LPA's reasons for refusal, they should normally make a new planning application and the appeal process should not be used to evolve a scheme. However, in this instance, the submission of these documents does not change the development in anyway, it simply supports the appellant's case that the use has taken place for a period of ten years. Furthermore, as the documents were submitted at the time the appeal was lodged, interested parties, including the Council have had the opportunity to comment on them.
4. Having regard to the principles established in the *Wheatcroft* judgment, I find that interested parties would not be prejudiced by the submission of these documents. Accordingly, I have determined the appeal having regard to the documents.
5. I note the objections to the proposal from local residents. However, the planning merits of the development have had no bearing on my consideration

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982]

of whether or not the development is lawful, ie whether it has been in continuous use for a period of ten years.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) is well-founded.

Reasons

7. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use subject of the application is lawful for the purposes of section 191 of the Town and Country Planning Act 1990. A use is lawful under the provisions of section 191(2)(a) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired.
8. The appellant has submitted signed copies of Assured Tenancy Agreements for the appeal property covering the years 2011-2024. Whilst the period of time covered by the agreements after the LDC application was made cannot be taken into account, between August 2011 and April 2022 the agreements indicate the property was continuously occupied as a small House in Multiple Occupation (HMO). Copies of invoices from the appellant's letting agency, 'Property Solutions', and copies of 'Deposit Protection Certificates' covering this period of time provide further support that the property has been in continuous occupation as a small HMO throughout this period.
9. Whilst the Council object to the submission of this documentation, it does not provide any comment on its content.
10. Overall, the evidence in support of the appeal is sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the appeal property was in use as a C4 small HMO for a period of ten years or more prior to the date the LDC application was made and is therefore lawful.

Conclusion

11. For the reasons given above, I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the C4 small HMO 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.

Alexander Walker

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 24 April 2022 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:

It has been demonstrated on the balance of probabilities that the property was in continuous use as a C4 small HMO for a period of 10 years or more prior to the LDC application being made.

Signed

Alexander Walker

Inspector

Date: 7 August 2023

Reference: APP/P4605/X/23/3315594

First Schedule

C4 small HMO

Second Schedule

Land at 7 Brookvale Mews, Birmingham B29 7HP

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 7 August 2023

by Alexander Walker MPlan MRTPI

Land at: 7 Brookvale Mews, Birmingham B29 7HP

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Scale: Not to Scale

