



Appeal Decision

Site visit made on 3 August 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2023

Appeal Ref: APP/Z1775/X/22/3300955

255 Francis Avenue, Southsea PO4 0AL

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ian Hebbard against Portsmouth City Council.
 - The application, Ref 21/01307/CPE, is dated 3 September 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 described as: *"Existing use - C4 HMO. Due to a recent inspectorate decision a change of use from a C4 HMO to 7-8 person HMO is not considered material change and therefore no planning application is needed."*
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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.

Application for Costs

2. An application for costs was made by Mr Ian Hebbard against Portsmouth City Council. This application is the subject of a separate decision.

Preliminary Matter

3. Schedule 1, Part C of The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Class C4 as 'Use of a dwellinghouse by not more than six residents as a "house in multiple occupation" (HMO).
4. The description in the heading above has been taken from section 5 of the application form. However, its wording implies that the existing use is a C4 HMO which is clearly not what was intended by the appellant. So, as the Council has not issued a decision notice, I have taken the description of the existing use for my decision from section E of the appeal form. This describes the specific existing use more succinctly and precisely than the application form and reflects my observations at my site visit.

Main Issue

5. The main issue is, if the Council had refused the application, whether the refusal would have been well-founded or not.

Reasons

6. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any existing use of land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use.
7. Section 191(2) of the same Act states that for the purposes of this Act uses are lawful at any time if (a) no enforcement action may then 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 (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
8. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
9. Planning Practice Guidance states that the applicant is responsible for providing sufficient information to support an application¹. In the case of applications for existing use, it states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
10. In respect of the grounds for this LDC application, the appellant states:

"Due to a recent Inspectorate decision a change of use from a C4 HMO to 7-8 person HMO is not considered material change and therefore no planning application is needed."
11. Accordingly, submitted in evidence is a decision letter, dated 29 April 2021, for various appeal decisions within the Portsmouth City Council area, (see Annex A). In summary, the Inspector in the decision letter for those appeals concluded that an additional 1 or 2 residents in specific HMOs did not constitute a material change of use.
12. So the basis of the appellant's case before me is that the change of use from a C4 HMO to an HMO with 7 bedrooms is not a material change in the use of the building.
13. Section 55 of the 1990 Act states:

"Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."
14. The concept of a material change of use is not defined in statute or any statutory instrument. But the basic approach is that, for a material change of use to have occurred, there must be some significant difference in the

¹ Lawful development certificates, Paragraph: 006 Reference ID: 17c-006-20140306

character of the activities on the land from what has gone on previously as a matter of fact and degree.

15. From the information provided and my observations at my site visit, the change of use which has occurred in this case is as a result of a former dining room, between a bathroom and kitchen on the ground floor, being changed to a seventh bedroom within the property.
16. In light of the 29 April 2021 appeal decision letter which has been provided, there is no evidence that the change of use which has occurred in this case has resulted in any significant difference in the character of the activities on the land from what has gone on previously as a matter of fact and degree.
17. Nothing has been provided to lead me to a different conclusion to that of the Inspector for the 29 April 2021 decisions identified in Annex A.
18. I fully appreciate that an HMO with more than 6 residents falls within a different use class to an HMO with 6 residents. But it does not follow that a change from 6 to 7 residents, as is the case here, means that a material change of use has occurred.

Conclusion

19. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of: 'Existing use as House in Multiple Occupation with 7 bedrooms', 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.

L Perkins

INSPECTOR

Annex A

APP/Z1775/C/20/3245106, APP/Z1775/C/20/3246078, APP/Z1775/C/20/3245110, APP/Z1775/C/20/3246079, APP/Z1775/C/20/3245108, APP/Z1775/C/20/3246077.



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 3 September 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:

Based on the information provided in this case, the change of use of the land from a C4 House in Multiple Occupation with 6 bedrooms to a House in Multiple Occupation with 7 bedrooms did not constitute a material change of use for the purposes of section 55 of the above Act.

Signed:

L Perkins

INSPECTOR

Date: 30 August 2023

Reference: APP/Z1775/X/22/3300955

First Schedule

Existing use as House in Multiple Occupation with 7 bedrooms

Second Schedule

Land at 255 Francis Avenue, Southsea PO4 0AL

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: 30 August 2023

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Land at: 255 Francis Avenue, Southsea PO4 0AL

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Scale: Not to scale

