



Appeal Decision

Site visit made on 29 August 2023

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 11 October 2023

Appeal Ref: APP/T5150/X/22/3309003

19 Dean Road, London, NW2 5AB

- 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 N Patel against the decision of the London Borough of Brent.
 - The application ref 22/1704, dated 9 May 2022, was refused by notice dated 30 June 2022.
 - The application was made under section 191 the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is for the existing use as a house in multiple occupation with seven residents (sui generis use).
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Decision

1. The appeal is dismissed.

Reasons

2. The application seeks a lawful determination that the property has been in use as a seven bed House in Multiple Occupation for a continuous period of at least 10 years prior to the date of the submission of the application.
3. The evidence submitted consists of a range of letters, documents and photographs spanning approximately the period between 2009 and 2022, including bank statements, letters from the owners, eviction notices, parking fine letters, loan letters, solicitors and debt recovery letters and other documents. Photos have been provided of a carephone system and fire alarm system, and correspondence with companies regarding the maintenance of the fire alarm system. A list of names of people registered on the electoral register in relation to this property from 1987 to 2021 shows between 3 and 7 occupiers have been registered during this period.
4. The evidence includes a Freedom of Information response letter from the Central and North West London NHS Trust dated 18 May 2022 which confirmed that "This supported housing unit has been used for over 11 years". The NHS Trust website indicated Dean Road is a supported housing facility which consists of independent flats or bedsits with some communal facilities and 24-hour staff support. An email dated June 2022 notes the property was previously used as a supported housing unit in partnership with the NHS to house single homeless men with various vulnerabilities. This type of use is supported by the presence of the carephone facility. I noted at the site visit that there was no carephone facility visible. However, the evidence suggest on the balance of probability that it was there once and, in any case, the other evidence alone itself demonstrates the previous use of the building. It was noted that the scheme was closed last year.

5. I consider that the evidence demonstrates on the balance of probability that this was a supported living facility with 24 hour support. It was more akin to the C3(b) use class, if it were used for up to six people. It was for more people than that, so to my mind it would be a sui-generis use. It would not have been a C4 use as again there were more than six people.
6. The issue is whether the change between the different sui-generis uses was a material change to the character of the building and its use. I consider that the use as an HMO, large or small, is considerably different from an assisted living unit. The pattern of use, comings and goings, is likely to be considerably different for people with 24 hours care/surveillance and workers being on site. A main point is that there would likely be a significant element of control of the occupants and probably moderation of behaviours. A group of separate users in an HMO would not have that type of control. I accept that the building appears suitable as an HMO, and its physically character would not be changed by the change of use. However, as there has been a material change in the use itself it requires planning permission, to which any appropriate conditions could be attached. I conclude on the balance of probability that it would be a material change of use, for which planning permission is required.
7. The Council also identify that the electoral roll and other evidence related to continuous occupation by seven people, which only covers a maximum period of about 4 years continuous use. I also note the appellant's statutory declaration. However, even with the statutory declarations I conclude on the balance of probability that it is a material change of use from the previous assisted living arrangement to an HMO, large or small, and that has occurred within the last 10 years, so 10 years continuous use is not demonstrated.

Conclusion

8. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use as a house in multiple occupation with seven residents (sui generis use) 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.

Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

INSPECTOR