



Appeal Decision

No Site Visit

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

an Inspector appointed by the Secretary of State

Decision date: 13 October 2023

Appeal Ref: APP/Y3615/X/23/3319131

15 Foxenden Road, Guildford, Surrey, GU1 4DL

- 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 Neil Thompson against the decision of Guildford Borough Council.
 - The application ref 22/P00917, dated 8 June 2022, was refused by notice dated 22 November 2022.
 - The application was made under section 191(1) the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of property as a house in multiple occupation for 7 persons (Use Class C4).
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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. A site visit was not necessary as the accommodation for seven persons at the property is not disputed.

Reasons

3. HMO Licences under the Housing Act have been issued for the property. One was for the period from 2010 to 2013, another for the period 2015 to 2018 and then a draft Licence from 2020 for 1 year. Although the licence in 2010 was only for 3 years, the appellant notes that the full 5 year fee was paid and that a clerical error was made. He notes the same error was made in 2015, but that was spotted and the error corrected to have an expiry date of 2020. The Council indicate that there can be a reason for a reduced term, and even possibly a mistake. Historic notes are not available for the time, so it is not possible to say the reason, just that there was no licence from 2013 to 2015.
4. The Council also notes that on 11 December 2020 the Licence was reduced to 6 persons. The application is dated 8 June 2022, so the 10 year period where lawfulness can be obtained is any 10 year period before, not just immediately before.
5. For LDCs the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict it 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 is precise and unambiguous to justify the grant of a certificate on the balance of probability.

6. The appellant has provided a sworn affidavit dated May 2022 to say that from March 2010 the property has been in multiple occupation to the present day for seven persons.
7. For planning purposes the issue of its lawfulness relates to the use that has been occurring in the building, not the Licences that were in place at the time. Licences clearly help in determining that use on the balance of probability. In this case the appellant notes the use of the building for seven persons since 2010 when the attic was converted allowing use by seven persons. A Licence was obtained for use by seven persons.
8. The appellant indicated a mistake on the period of 5 years to 3 years which is not confirmed, but the same occurred in 2015. That error was rectified to reflect the 5 year period. Overall, I consider that it is likely an error was made with the Licence in 2010. The appellant confirms the continuing use for seven persons, whether or not the Licence was in place at the time. The period is more than 10 years prior to when the LDC was applied for. I consider that on the balance of probability the use claimed has occurred and there is little evidence to contradict this.

Conclusion

9. 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 a 7 bedroom House in Multiple Occupation (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.

Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

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 8 June 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the use as a seven bedroom HMO has occurred since 2010 and has gained lawfulness through 10 years continuous use.

Signed

Graham Dudley

Inspector

Date: 13 October 2023

Reference: APP/Y3615/X/23/3319131

First Schedule

7 bedroom House in Multiple Occupation (HMO).

Second Schedule

Land at 15 Foxenden Road, Guildford, Surrey, GU1 4DL

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. 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.