



Appeal Decision

Site visit made on 24 October 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2023

Appeal Ref: APP/Z0116/X/23/3324537

65 Lower Redlands Road, Redland, Bristol City, Bristol BS6 6SR

- 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 refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Fraser Wylie against the decision of Bristol City Council.
 - The application Ref 22/05098/CE, dated 23 September 2022, was refused by notice dated 8 March 2023.
 - 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: Use as a large HMO.
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Preliminary Matters

1. The description of development given above has been taken from the Council's decision notice and the appeal form.

Main Issue

2. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue in this case is whether the Council's decision to refuse to grant a LDC was well founded.
3. Having regard to the case put forward, the main consideration is whether or not the use of the appeal site for a large house in multiple occupation (HMO) has continued substantially uninterrupted for a period of ten years beginning with the date of the breach¹, such that at the time the LDC application was made the use was immune from enforcement action.
4. The burden of proof in this case is on the appellant, and the test of the evidence is the balance of probabilities. The Planning Practice Guidance document on Lawful development certificates advises 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.

¹ 171B(3) of the 1990 Act.

Reasons

5. The appeal site is occupied by a large semi-detached dwelling that, at present, accommodates a living room and kitchen at ground floor, 8 bedrooms over two floors, and bathrooms at first floor.
6. There is no dispute between the parties that the property is used as a large HMO. The appellant says that he purchased the property in April 2003 and that it has been continuously let to students since this time. In cases such as this, the evidence submitted to demonstrate the continuity of the use need not focus on the 10 year period starting with the date of the breach. Any 10 year period can be considered before the date the LDC application was made.
7. The LDC application was submitted with copies of assured shorthold tenancy agreements relating to most of the 10 years from 2011. Submitted with the appeal are agreements covering the years from 2007. Up until 2017 these agreements are signed by 7 tenants and each cover a 12 month period. After 2017, the tenancy agreements provided are for 8 tenants. The appellant has explained that the increase resulted from the subdivision of one of the larger bedrooms in the property.
8. With regard to this increase since 2017, the Council say that this does not prevent the issue of an LDC. I agree with this position. Whilst this increase might have resulted in an intensity of the use, I have no reason to find that this has resulted in a material change in the use.
9. In correspondence between the parties, I can see that the Council sought clarification on a number of matters relating to the evidence, including any periods not covered by a tenancy agreement. I can see that the Council were satisfied with the evidence submitted by the appellant in response to these matters. I can also see that, in refusing the application, the Council only point to a gap in the evidence from July 2017 to June 2019. This indicates that the Council were otherwise satisfied that the evidence was sufficient to demonstrate the continuity of the use. I have no reason to take a different view.
10. As for the period missing from evidence, the appellant has provided a tenancy agreement for the 12 months from July 2017 to June 2018. He has also explained that the tenants during that time continued their occupation of the property in the 12 months from July 2018 to June 2019. This is corroborated by a letter from one of the tenants who occupied the house during this period in which he states that he and 7 others lived at the property from July 2017 to June 2019. There is also support for the appellant's claim in the correspondence from that time relating to the deposit protection.
11. The Council does not dispute the additional evidence provided with the appellant's appeal in response to the reasons for refusal of the LDC application. Furthermore, I have not identified any reason to doubt the appellant's claims regarding this period.
12. In addition to the above, the appellant's case regarding the continued occupation of the property for more than 10 years is supported by the letter dated 20 February 2023, from Bristol City Council's revenues officer. They state that, according to their records, 'the property has been tenanted for more than ten years'. Whilst I acknowledge that this does not provide details of the number of residents occupying the property during this time, it does corroborate the appellant's claim with regard to the continuity of the use.

13. The revenues officer refers to a period between 19 June 2021 and 30 June 2022, where the appellant is held liable as he had 'not given details of tenants for this period'. Whilst this is noted, I have had regard to the tenancy agreement, signed by 8 tenants for that period.
14. Having regard to all of the above, I find the appellant's evidence to be sufficiently precise and unambiguous. I find the evidence to be corroborative of the appellant's claim regarding the continuity of the use of the property as a large HMO. It provides a consistent record of how the property has been let for a period starting from 2007 up until the date the LDC application was made. Furthermore, I have identified no evidence sufficient to contradict or make the appellant's version of events less than probable.
15. Accordingly, the appellant has demonstrated that, on the balance of probability, the property has been used as a large HMO for up to 8 residents for a period in excess of 10 years and was lawful on the date the application was made.

Conclusion

16. 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 property occupying the appeal site as a large HMO for up to 8 residents 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.

Decision

17. 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.

J Moss

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 September 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 that, on the balance of probability, the property occupying the land specified in the Second Schedule had been used as a large house in multiple occupation for up to 8 residents for a period in excess of 10 years and was lawful on the date the application was made.

Signed

J Moss

Inspector

Date: Friday, 22 December 2023
Reference: APP/Z0116/X/23/3324537

First Schedule

The use as a large house in multiple occupation for up to 8 residents.

Second Schedule

65 Lower Redlands Road, Redland, Bristol City, Bristol BS6 6SR

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: 22 December 2023

by **J Moss BSc (Hons) DipTP MRTPI**

Land at: 65 Lower Redlands Road, Redland, Bristol City, Bristol BS6 6SR

Reference: APP/Z0116/X/23/3324537

Scale: Not to scale

