
Appeal Decision

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 12 January 2024

Appeal Ref: APP/P4605/X/23/3325829

324 Harborne Park Road, Birmingham B17 0NE

- 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 Peter Alan against the decision of Birmingham City Council.
 - The application Ref 2023/01703/PA, dated 14 March 2023, was refused by notice dated 25 May 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 as an HMO for 3 tenants (Use Class C4).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to issue an LDC was well founded. In this case that will turn on whether the appellant has proved on the balance of probability that the use of the property changed to use as a HMO for 3 tenants (Use Class C4) on or before 14 March 2013 and then continued without significant interruption for 10 years after the date of the change or that the use commenced prior to 30 November 2014 when the previous Planning Policy Document Houses in Multiple Occupation in the Article 4 Direction Area of Selly Oak, Edgbaston and Harborne wards was activated.

Reasons

3. In an appeal relating to a lawful development certificate the onus of proving the relevant facts rests with the appellant, and the standard of evidence is the balance of probabilities. The appellant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
4. A range of evidence has been submitted in support of this appeal, including:
 - Location plan and floor plans;
 - Tenancy agreements for the property covering the period 1 July 2012 to 31 July 2023; and

- Correspondence from Birmingham City Council confirming properties recorded as HMOs in connection with the City-wider Article 4 Direction which came into force on 8 June 2020.
5. The plans show a semi-detached two storey residential property with one bedroom, living room, kitchen and porch on the ground floor with three bedrooms, a shared bathroom and toilet on the first floor.
 6. The appellant has stated that the tenancy agreement documents submitted provide the necessary evidence of occupation by three unrelated individuals in the property. I have also noted that the appellant states that dispensation was given for tenants who occupied the property during the period of Covid 2020/2023. They have been resident in the property since 1 February 2021.
 7. The evidence shows tenancy agreements in place for 3 tenants before 30 November 2014. However, tenancy agreements are not themselves evidence of actual occupation of the property and should be supported by more detailed evidence to prove a change of use commenced before the material date.
 8. There are two tenancy agreements from 1 October 2014 to 30 September 2015 and between 1 October 2015 and 30 June 2016 for two residents only. The Town and Country Planning (Use Classes) Order 1987 (as amended) classifies C4 HMOs as accommodating between 3 and 6 unrelated individuals continuously. In this case the evidence is that there are more than 4 years when there have been only two tenants occupying the property.
 9. Furthermore, the evidence before me suggests that some occupants may have been related and in the absence of any further evidence from the appellant this must also count against continuous occupation by unrelated individuals. Consequently, even taking account of any dispensation that may be given for the exceptional circumstances around the Covid pandemic, based on the tenancy agreements there has not been continuous occupation for between 3 and 6 unrelated individuals during the material period.
 10. There is evidence in correspondence from the City Council that the appeal property was registered as a HMO C4 property in connection with the City-wider Article 4 Direction which came into force on 8 June 2020. However, that is not evidence of the level of continuous occupation for the period required.
 11. Therefore, the evidence submitted by the appellant is insufficient to prove on the balance of probability that the use of the property changed to use as a HMO for 3 tenants (Use Class C4) on or before 14 March 2013 and then continued without significant interruption for 10 years after the date of the change or that the use commenced prior to 30 November 2014.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use as an HMO for 3 tenants (Use Class C4) 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.

A A Phillips

INSPECTOR