



Appeal Decision

Site visit made on 8 December 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5TH FEBRUARY 2024

Appeal Ref: APP/Y1110/X/23/3330550

11 Abbots Road, Exeter, Devon EX4 7AN

- 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 Alex Moorhouse against the decision of Exeter City Council.
 - The application ref 22/1756/LED, dated 22 December 2022, was refused by notice dated 31 March 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use development for which a certificate of lawful use or development is sought is the existing use as small HMO (Use Class C4), limited to 3no. occupants.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Due to the nature of this case, it was determined that an unaccompanied site visit was appropriate. This means I did visit the location and view the property externally, but I did not inspect the property internally. The appellant was made aware that I would be assessing the Council's decision on the basis that there were no internal or external alterations to the property, and floorplans of the property are provided. No further comments or objections were received.
3. In cases such as this, the onus rests with the appellant to make their case. The evidence does not need to be corroborated by independent evidence to be accepted, provided the evidence alone is sufficiently precise and unambiguous on the balance of probability. Matters such as planning policies and the effect of the development on matters such as neighbour's living conditions are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.
4. The appellant has submitted a site location plan as well as floor plans of the property. The property is a mid-terraced two storey property with a living room, dining room, kitchen and utility room at ground floor, and three bedrooms and a bathroom on the first floor. There will be no physical alterations externally or internally from the layout plans submitted with the Planning Statement dated '01-09-2022'. The Lawful Development Certificate (LDC) is seeking lawfulness with respect to an existing C4 use, limited to three occupants.
5. A Class C4 use, as indicated in The Town and Country Planning (Use Classes) Order 1987 (as amended) ('UCO')¹ can be with respect to 6 occupants sharing a

¹ Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"

property as a House of Multiple Occupation (HMO). An HMO is interpreted as the same meaning as section 257 of the Housing Act 2004, but does not include a converted block of flats. As a point of clarification, section 258 of the Housing Act 2004 indicates that use Class C3 relates to a single person or by people regarded as forming a single household. This mainly relates to having a family link but does also include a couple living together as if they were a married couple or civil partners.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

7. The site lies within an area which is affected by the terms of an Article 4 Direction (A4D). The A4D was introduced because of an increase in the number of HMO properties in the area, which could cause an imbalance within the community, effecting the character and appearance of the area, as well as the living conditions of neighbouring occupants. This A4D removes the permitted change of use of properties from a Class C3 (dwellinghouse) to Class C4 (HMO), which would otherwise be granted deemed planning permission by Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
8. However, the GPDO grants deemed planning permission for permitted development (my emphasis), so in order to be permitted, it first has to be considered development. Development is defined in section 55(1) of the Town and Country Planning Act 1990 (1990 Act) as including 'the making of any material change in the use of any building or other land'. Consequently, if the change of use is not 'material', then it cannot be considered development under s.55 of the 1990 Act. In this context, the limitations applied by the A4D, and the permitted changes allowed via the GPDO, would be irrelevant.
9. Where lawfulness is established at a base level, and it is proposed to intensify the use, it is necessary to compare the existing use with the actual previous use, not a notional use. Consequently, the fact that a single dwelling could have been used by three occupants would be relevant as a fallback position if planning permission was being sought. However, in an LDC such as this, the assessment is whether the use of the property from a C3 dwelling house by two occupants to a C4 HMO use, limited to three occupants, results in a material change of use. In light of this, detailed information on the previous and existing use would need to be provided to allow the decision maker to carry out this assessment.
10. I have had regard to the evidence submitted by the appellant in the Planning Statement and Statement of Case (SoC), together with the appendices. In section 3 of the SoC it indicates 'the applicant intends to demonstrate that three occupants are not material when considered in the context of the arrangement of the site and townscape, which had previously been in established lawful use as a three bedroom dwelling.' Section 4.5 of the SoC clarifies that the LDC is concerned with 1 additional occupant, to a maximum of three.
11. Based on the information provided, I have concluded that the previous use was as a dwellinghouse by two occupants. Also the floorplans indicate that the number of bedrooms along with the communal areas and facilities to be shared

will be retained as before. The size of the property and its appearance would also not be altered internally or externally. However, little information has been submitted regarding the previous use as a dwellinghouse by two occupants. For instance, I do not know whether it was a couple living as partners or two family members sharing with independent lives. Also, as the use by three has already commenced, how it was used previously would not be apparent by any site visit. Consequently, I have little detail on the actual previous use by two, which would set out a base level to compare with the current use of the property by three.

12. In terms of the current use, it is indicated in the representations submitted by neighbours that the area is a mix of student housing and family dwellings, and the current three occupants of the property are students. However, the appellant's submissions do not confirm this to be the case. The occupation of a house by students, or just unrelated people as an HMO, can be used in a variety of ways, which may or may not be materially different to the occupation by a couple or people living together as a single household. I have no substantive detail on the composition of the group of three, or whether they occupy the house as a group or if they are independently renting. Further, I have no information on whether they are responsible for the whole house or just their individual bedrooms, or, if one left, who would be responsible for securing another tenant.
13. Without details of how the existing or previous uses operate, I have no solid evidential basis upon which to make an accurate comparison between the two. As indicated initially, the onus rests with the appellant to make out their case. In my judgment, that burden has not been satisfactorily discharged as I do not have the necessary evidence to make a reasoned decision one way or the other.
14. Accordingly, on the balance of probability, the appellant has failed to show that the change of use is not material and, therefore, not development having regard to s.55 of the 1990 Act.

Other Matters

15. Whilst I do appreciate this appeal is similar to the Hoopern Street appeal², in terms of what is proposed, I do not have the full details of this case, so it is difficult to directly compare. However, the Hoopern Street appeal was for a proposed LDC, allowing the Inspector to consider the current layout and use of the property. It is also in a different location, and it is likely that the information submitted, the circumstances, and other physical factors at the site and surroundings are not the same as the appeal before me. I have therefore taken it into account in so far as it provides useful information, but each LDC case must be individually judged, on a fact and degree basis, and considering their particular circumstances.
16. Both parties have provided evidence in respect of the concentration of HMOs in the area, and the appellant has highlighted a permission granted via a s78 appeal in Dinham Road³. In the Dinham Road appeal, the Inspector concluded that there was not an overconcentration in the immediate vicinity of the appeal site. Despite the proposal being contrary to the relevant development plan policy and supplementary planning document for HMOs, which resisted permission for HMO's where there is an overconcentration of the use in the A4D area. As I have

² Appeal reference APP/Y1110/X/22/3293554

³ Appeal reference APP/Y1110/W/21/3288883

found that there is insufficient information to determine whether the change of use in this case is material, to consider the evidence on the concentration of HMO's in the vicinity, or the relevance of the Dinham Road appeal, would not alter my decision.

Conclusion

17. While I agree with the Council's decision to refuse to issue an LDC, having regard to the available evidence, my decision is made on a different basis. As with all LDC applications, it is open for fresh applications to be made if, for example, greater detail or other evidence comes to light to make a comparison on the changes possible.
18. For the reasons given above I conclude on the evidence available that the refusal to grant a certificate of lawful use in respect of the existing use of the property as a small HMO (Use Class C4), limited to 3no. occupants, was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195 (2) of the 1990 Act as amended.

M. P. Howell

INSPECTOR