



Appeal Decision

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08th February 2024

Appeal Ref: APP/N4720/X/23/3318110

48 Richmond Mount, Headingley, Leeds, West Yorkshire, LS6 1DF

- 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 (LDC).
 - The appeal is made by Wan-Ju Ho against the decision of Leeds City Council.
 - The application ref 23/00441/CLE, was refused by notice dated 3 March 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use which a certificate of lawful use is sought is a small house in multiple occupation (HMO) (C4 Use).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Under s191(2)(a) of the 1990 Act, uses are lawful at any time if no enforcement action may then be taken in respect of them because the time for enforcement action has expired.
3. Under the terms of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO), the change of use between Classes C3 (dwellinghouses) and C4 HMOs is permitted development. However, that provision was suspended in Headingley from 10 February 2012 by a Direction under Article 4 of the GPDO. Consequently, the relevant time limit in the change of use of a single dwellinghouse to a small HMO is ten years beginning with the date of the breach, as set out under s171B(3) of the 1990 Act.
4. The application form submitted to the Council was undated. However, the Council's Decision Notice references the date of application as 1 February 2023. I have relied on this as the relevant date on or before which the 10-year period for the use of 48 Richmond Mount as a small HMO is claimed to have accrued.
5. Since the Council's decision, the appellant has submitted further information in support of the application for an LDC. I have had regard to the additional evidence in coming to my decision.

Main Issue

6. The main issue is whether or not the Council's decision to refuse the LDC was well founded.

Reasons

7. The burden of proof in satisfying the requirement of s191(a) falls to the appellant to establish that the use of 48 Richmond Mount as an HMO commenced at least 10 years before the date of the application (1 February 2013) and continued without any significant interruption thereafter. The

appropriate standard for testing the evidence is made on the balance of probabilities, that is to say whether something is more likely than not.

8. The Planning Practice Guidance reflects prior Court judgments. It sets out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
9. In support of the claim, the appellant has provided a number of 12-monthly rental agreements, appeal statements and a copied confirmation from the Council as to the extent council tax exemptions associated with student occupation of the property have existed. Little evidence is provided to demonstrate any use of the property prior to the appellant's acquisition in 2012.
10. Documents submitted for the appeal show assured shorthold tenancy agreements relating to occupation of 48 Richmond Mount from 1 July 2012 onwards. Aside from absent agreements for 2013-2014 and 2014-2015, the tenancy agreements show occupation by between 4 and 6 individuals with different surnames.
11. The appellant explains that the absence of documentation for 2013-2014 was due to a former letting agency's (Diamond Property) misplacement of records. Similarly, documentation held by another letting agent (Parkland Property) was incomplete for the period 2014-2018. However, since the Council's consideration of the application, records from 2015-2018 have been recovered and final signed copies provided.
12. Along with accounts for 2016-2017, these show occupancy by apparently unrelated individuals over the relevant years. In 2016-2017, the accounts show that 1 of 6 occupiers (Spence) left at the end of February 2017 and was replaced by another (Kesedzic) to retain an overall occupancy of 6.
13. However, there is little evidence before me to demonstrate the continuity of use from 30 June 2013 to 1 July 2015. The appellant claims consistent council tax exemptions from April 2012 across all years since (except 2016-2017 when there were 2 non-student residents). This was confirmed by the Council. Although this would imply occupancy primarily by students, there is little to confirm the actual nature of occupancy, or the number of occupiers during the 2013-2015 period not covered by tenancy agreements.
14. Additionally, the appellant refers to HMO licences being in place since 2012. These are not provided in evidence. However, the Council highlights that such licences can be applied for numerous years in advance. Accordingly, they are not definitive of any actual use that transpired after their issue.
15. The appellant acknowledges that gaps exist in the succession of tenancy agreements. However, despite referencing the rents as a main source of income, no financial/bank records have to show comparable income over the 30 June 2013 to 1 July 2015 period been submitted for to support the claim. In the absence of any alternative evidence, affidavit or sworn oath to add weight to the appellant's claims in relation to that period, I find there is insufficient

evidence to demonstrate the necessary continuity over any 10-year period prior to the relevant date.

16. For those reasons, I find the appellant's evidence in relation to the 30 June 2013 to 1 July 2015 period to be imprecise and ambiguous. It is insufficient, on the balance of probability, to demonstrate continuous use of the dwellinghouse as a small HMO for the qualifying period of 10 years on, or before, the relevant date.

Other Matters

17. I acknowledge that the appellant acquired the property in good faith and on the basis that it benefitted from lawful use as a small HMO. However, as there is little to demonstrate the nature and term of any former use of the property, this is a matter of negligible weight in the appeal.

Conclusion

18. 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 of 48 Richmond Mount as a small HMO (C4 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.

R Hitchcock

INSPECTOR