



Appeal Decision

Site visit made on 6 March 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2024

Appeal Ref: APP/Z0116/X/24/3336632

14 Highbury Villas, Kingsdown, Bristol BS2 8BX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Miss Leila Nandlal against Bristol City Council.
 - The application ref 23/03754/CE is dated 27 September 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 described as "This property was owned by my parents and rented to students as a 7 bedroom HMO. It has been in use as a 7 bedroom HMO since 2008, as confirmed by Bristol Council's private housing department, and an HMO license remains in place until December 2023.....I am now selling the property. The buyer wishes to continue renting the house to students as an HMO. However, the buyer's lender has stipulated that we must acquire a lawful development certificate for existing use as confirmation that it can continue to be let as a 7-bed HMO."
-

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. The application seeks a certificate of lawful use for the use of a building for a purpose falling within Use Class C4 (Houses in Multiple Occupation). However, the information submitted shows that the building accommodates seven bedrooms. Use Class C4 is for the use of a dwellinghouse by not more than six residents as a House in Multiple Occupation (HMO). As such, the application seeks to establish the use of the building as an HMO accommodating seven residents, which is a sui generis use, as the Council identifies in the Delegated Report. I have considered the appeal on this basis.
3. The submitted application form contains no date and the Council state in the submitted Delegated Report that the application was registered on 18 October 2023, however there is no date of when the application was received. The appellant indicates on the appeal form that the application was submitted on 27 September 2023. I have therefore taken this as the relevant date for the purposes of this appeal.

Main Issue

4. The appellant applied for a certificate of lawful use, seeking to establish that the use of a building for a purpose falling within Use Class C4 (Houses in Multiple Occupation) was lawful. The Council failed to determine that application. As such, I have reviewed the information submitted with the application by the appellant.

5. In this light, the main issue in this case is whether or not the appellant has proved on the balance of probabilities, that use of the building as a HMO falling within a sui generis use, began on or before 27 September 2013, and continued without significant interruption for ten years after the date of the change.

Reasons

6. The application was accompanied by an email from the Council's own Housing Section which confirmed that the property had an HMO licence between 29 December 2008 and 1 March 2013, as well as 27 May 2013 and 27 May 2018. At the time of the email, there was also an extant licence which expired on 26 December 2023. It is further explained in the email that any gaps between licences were likely due to Council backlogs in the processing of HMO licences. The Council also confirm that all the licences issued have been for seven bedrooms and seven occupants.
7. The Council has also submitted copies of additional documents that were submitted which include:
- A tenancy agreement for seven occupants dated 1 July 2014
 - A tenancy agreement for seven occupants dated 1 July 2016
 - A tenancy agreement for seven occupants dated 30 June 2017
 - A tenancy agreement for seven occupants dated 13 June 2018
 - A tenancy agreement for seven occupants dated 1 July 2019
 - A tenancy agreement for seven occupants dated 1 July 2020
 - A tenancy agreement for seven occupants dated February 2021
 - A tenancy agreement for seven occupants dated February 2022
 - Copies of bank statements detailing the payment of rents during 2015 and 2016
 - Details of deposit protection dated 2013
8. Considering the information submitted, and without any evidence to the contrary, the appellant has demonstrated that, on the balance of probability, the property has been utilised as an HMO accommodating seven residents for a period in excess of 10 years. There is nothing to indicate any break in occupation of such significance as to consider otherwise.

Other Matters

9. The Council's Delegated Report refers to the imposition of conditions; however, it is not possible to attach conditions to a certificate of lawful use.

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

Martin Allen

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 27 September 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched 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 on the balance of probabilities, that use of the building as a HMO falling within a sui generis use, began on or before 27 September 2013, and continued without significant interruption for ten years after the date of the change.

Signed

Martin Allen

Inspector

Date: 20 June 2024

Reference: APP/Z0116/X/24/3336632

First Schedule

Seven-bedroom, seven-resident House in Multiple Occupation

Second Schedule

Land at 14 Highbury Villas, Kingsdown, Bristol BS2 8BX

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 20 June 2024

by Martin Allen BSc (Hons) MSc MRTPI

Land at: 14 Highbury Villas, Kingsdown, Bristol BS2 8BX

Reference: APP/Z0116/X/24/3336632

Scale: Not to Scale

