



Appeal Decision

Site visit made on 26 June 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 17 July 2024

Appeal Ref: APP/J3015/X/22/3310514

58 City Road, Beeston, Nottingham NG9 2LQ

- 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 Jarnail Srai against the decision of Broxtowe Borough Council.
 - The application ref PP-10589554, dated 28 January 2022, was refused by notice dated 8 August 2022.
 - The application is proceeding 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 for a change of use from a residential dwelling to an HMO for up to 4 persons.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made under Section 192 of the Act which relates to proposed rather than existing use. However, as the appellant is alleging that the change of use to Class 4 HMO use occurred prior to the 26 March 2022, the appeal can be considered under Section 191(1)(a) which refers to an existing rather than a proposed use.
3. Although the appellant refers to an appeal against non-determination in his appeal form, the application was refused by the Council on 8 August 2022 and the appeal is therefore against that refusal.

Planning Policy Background

4. Changes made to the Town and Country Planning (Use Classes) Order 1987 (UCO) in October 2010 allowed a change of use from a class C3 dwellinghouse to a Class C4 HMO (house in multiple occupation for up to 6 persons) without the prior grant of planning permission. On 26 March 2022, the Council adopted a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). A change of use from Class C3 to Class C4 HMO which occurred from the 26 March 2022, therefore required express planning permission in areas which included the appeal site.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well founded. If the appeal property was in use as a Class C4 HMO prior to 26 March 2022 when the Article 4 Direction came into force then express planning permission was not required use and the LDC

should be granted. The onus of proof lies with the appellant and the evidential test is the balance of probabilities.

Reasons

6. The appeal property is an end of terrace property, which at the time of my visit, had a ground floor bedroom, a kitchen and living area, two bedrooms on the first floor with a bathroom and a fourth bedroom in the loft space.
7. The appellant purchased the appeal property on the 16 December 2021. He maintains that he completed internal refurbishment to convert the dwelling house to be suitable for HMO use and had four tenants in occupation by the middle or end of February 2022. The appellant has provided tenancy agreements for four individual occupiers. The agreements were for a fixed term of 6 months and were dated 14 February 2022 with the same commencement date. The terms of the agreements provide for rental payments of £520 each payable in advance but with the first payment due on 31 March 2022. The deposits of £500 each were to be paid on or before 14 March 2022. There is no explanation provided as to why rent and deposit payments were not payable in February if the tenants were in occupation in February 2022 and payments were due in advance.
8. Bank statements included in an email exchange show two transfers from a separate account of the appellant for the 24 March 2022 and the 6 April 2022. The appellant refers to both transfers as being for rent rather than rent and deposits and the occupiers paying in cash. However, it is not clear without further evidence how those payments relate to the actual occupation or the dates specified in the agreement. No information has been provided from the appellant or the occupiers themselves in the form of statutory declarations to explain what payments they made at the outset by way of cash or bank transfer, how the payments for bills were made and significantly when the change of use occurred.
9. The Council's delegated report recommended granting the LDC application and refers to tenants "observed" at the property at site visits on the 9 May 2022 and 6 June 2022. The Council's position then changed and the notice of refusal was issued in August 2022. The Council has chosen not to provide a statement or provide comments on the appellants evidence as part of the appeal. The appellant was asked to provide further evidence to the Council in late June 2022 and examples of the types of evidence that could be provided were listed and included proof of payment from the occupiers and 'affidavits.'
10. The appellant states that he would have provided further information in the form of invoices, affidavits, rental income trail and invoices from agents had he been aware at the outset that these were required. Nevertheless, the appellant could have submitted further information and evidence as part of this appeal when the refusal notice refers to the evidence available not establishing that the change of use occurred before the 26 March 2022.
11. Whilst the appellant is clearly frustrated by the Council's change of position and what he considers to be communication errors, it is for the appellant to show on a balance of probabilities that his version of events is correct if an LDC is to be issued. Any issues that the appellant has with the Council's processing of the application need to be discussed with the Council.

12. As established in *Gabbitts v SSE & Newham LBC* [1985] JPL 630 and the Planning Practice Guidance (PPG) an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
13. However, the appellant's evidence is not precise and unambiguous particularly with regard to when the change to Class 4 HMO use occurred. Although the appellant has referred to refurbishment works being carried out, the layout of the appeal property could also accommodate C3 single dwellinghouse use. The appellant has therefore not demonstrated on a balance of probabilities that the Class 4 HMO use did commence prior to the 26 March 2022. It may be that the appellant can produce such evidence but he has not done so for this appeal.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of a change to a Class 4 HMO 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.

E Griffin

INSPECTOR