



Appeal Decision

Site visit made on 12 November 2024

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

an Inspector appointed by the Secretary of State

Decision date: 7 January 2025

Appeal Ref: APP/W2465/X/24/3337071

19 Highfield Street, Leicester, LE2 1AB

- 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 Pradip Jethwa against the decision of Leicester City Council.
 - The application ref 20230581, dated 4 April 2023, was refused by notice dated 14 August 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 HMO.
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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.

Main Issue

2. The main issue is whether the Council's decision was well-founded. That will turn on whether the appellant has proved on the balance of probability that the use of the property changed to use as an HMO on or before 4 April 2013 and that the use then continued without significant interruption for 10 years after the date of the change.

Reasons

3. In an appeal relating to a LDC 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. The Council's reason for refusal states that "*The evidence submitted with the application shows that the property had accrued in July 2019 lawfulness as a house in multiple occupation for more than 6 persons*". As such there is no dispute that the use changed before 4 April 2013 and that the use then continued without significant interruption for 10 years after the date of the change. On that basis the appellant has submitted sufficient evidence on its own to discharge the burden of proof for a LDC to be issued.
5. However, the Council contends that since July 2019 the property has not been used as an HMO but has been under renovation. From the evidence before me and my own observations I can see that the works being carried out will result

in significant and material changes to the property and the individual living units by incorporating additional facilities for independent living such as bathrooms and kitchens. As a consequence of the renovation, the Council has concluded that, notwithstanding the availability of additional living space, additional bathroom facilities, shared garden space and a single energy meter, the property no longer lends itself to use as an HMO but instead self-contained flats.

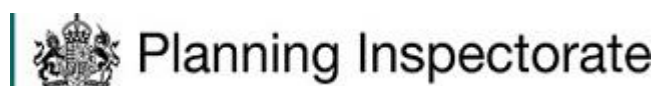
6. That may be the case, but an application under s191 of the Act seeks to establish whether any existing use of the building or other land is lawful. Although the HMO use may have ceased in July 2019 when renovation works started and the HMO stopped being occupied, the 10 year immunity period still stands because no material change of use of the property has subsequently occurred. There has been no intervening use, and the renovations are still being carried out leaving the whole property unoccupied in its current state and it is not yet capable of being occupied as self-contained flats. The use of the property as an HMO could resume at any time without requiring planning permission unless another use commences before that happens.
7. It is not for the Council to pre-empt how the property may be used in the future, but to determine whether in this case the appellant has demonstrated that there is an established use as an HMO. For that reason, the appellant has proved on the balance of probability that the use of the property changed to use as an HMO on or before 4 April 2013 and that the use then continued without significant interruption for 10 years after the date of the change. Should the appellant wish to use the property as flats or for any other use or uses other than as an HMO in the future, he would be entitled to submit a further LDC application for a proposed use.

Conclusion

8. For the reasons given above I conclude, on the evidence now available that the Council's decision to refuse to grant a certificate of lawful use in respect of the use of the property as an HMO was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

A A Phillips

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 4 April 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured 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:

The appellant has proved on the balance of probability that the use of the property changed to use as an HMO on or before 4 April 2013 and that the use then continued without significant interruption for 10 years after the date of the change. Although the HMO use may have ceased in July 2019 when renovation works started and the HMO stopped being occupied, the 10 year immunity period still stands because no material change of use of the property has occurred. There has been no intervening use, and the renovations are still being carried out leaving the whole property unoccupied in its current state and it is not yet capable of being occupied as self-contained flats. The use of the property as an HMO could resume at any time without requiring planning permission unless another use commences before that happens.

Signed

A A Phillips

INSPECTOR

Date: 7 January 2025

Reference: APP/W2465/X/24/3337071

First Schedule

HMO.

Second Schedule

Land at 19 Highfield Street, Leicester, LE2 1AB

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 7 January 2025

by A A Phillips

Land at: 19 Highfield Street, Leicester, LE2 1AB

Reference: APP/W2465/X/24/3337071

Scale: Not to Scale

