



Appeal Decision

Site visit made on 23 October 2024

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2025

Appeal Ref: APP/C2741/X/24/3346887

Apartments 2 – 9 Crescent Court, The Crescent, York YO24 1AW

- 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 Crescent Properties (York) Limited against the decision of City of York Council.
 - The application ref 24/00604/CPU, dated 4 April 2024, was refused by notice dated 31 May 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which a certificate of lawful use is sought is existing use of 8 no. flats as short-term holiday lets.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form does not specifically state what proposed use is being sought. It declares the existing use is lawful as *'short-term holiday lets are encompassed within Use Class C3 and therefore does not require a change of use. See Supporting Statement for further information.'* The Supporting Statement states in the first paragraph of its first page *'This CLOPUD seeks to confirm that the use of the apartments as short-term holiday accommodation is lawful, and therefore does not require an application for a change of use.'* The Council's refusal notice refers to *'use of 8no. flats as short term holiday lets'*. I find a combination of these 2 descriptions to be more precise.
3. Furthermore, while the application was made under s192 of the 1990 Act, it is clear from both the appellant's submissions and those of the Council that the use of 8 no. flats as short-term holiday lets has already begun. The application therefore relates to an existing use, which falls under s191 of the 1990 Act. The main appeal parties' views on this correction were sought and no objections were raised. I shall therefore proceed on the basis that the LDC is being sought for the *'existing use of 8 no. flats as short-term holiday lets'*.
4. The Government has consulted upon amending the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO) to introduce a new use Class C5, applicable to short-term lets. The necessary legislation to formalise such a new use class has not however been progressed. It is not therefore determinative to this case.
5. My decision rests on the facts of the case and the interpretation of any relevant planning law and judicial authority.

Reasons

6. The **main issue** is whether the Council's refusal to grant an LDC was well-founded.
7. It is for the appellant to show that the existing use of 8 no. flats as short-term holiday lets does not constitute development as defined in s55(1) of the 1990 Act. The onus of proof is on the appellant and the relevant test is on the balance of probability.

Background

8. For the purposes of s55(1) of the 1990 Act, relevant to this LDC, development means the making of any material change in use of the building encompassing the 8 no. flats. Other than in the context of Part 1 of Schedule 2 of the GPDO¹, flats are taken to be dwellinghouses. Furthermore, there is no dispute that each of the 8 no. flats the subject of the appeal have the facilities required for day-to-day private domestic existence. In the absence of any evidence to the contrary, I shall proceed on the basis that the 8 no. flats are dwellinghouses.
9. National Planning Practice Guidance confirms there is no statutory definition of 'material change of use'. Generally, this type of development is linked to the significance of the change and the resulting impact on the use of land and buildings. There must be some significant difference in the character of the activities from what has gone on previously, as opposed to a change in the particular purpose of a particular occupier. Whether a material change of use has taken place is a matter of fact and degree, determined on the individual merits of a case.
10. The courts have held that the appellant's evidence does not need to be corroborated by 'independent' evidence to be accepted. In the event that there is no evidence to contradict the appellant's version of events, there would be no reason not to issue an LDC. However, the appellant's own evidence does have to be sufficiently precise and unambiguous to justify a grant of an LDC, on the balance of probability.
11. It was held in *Moore*² that the use of a dwellinghouse for commercial holiday lettings will not always amount to a material change of use, nor is it the case that such a use can never amount to a material change of use. To establish whether a material change of use has occurred a comparison between the actual use and the previous use needs to be made, as opposed to considering a hypothetical range of activities. It has also been held by the courts that preformed groups coming together for a common interest (yoga or cycling, for instance) do not amount to a single household for Class C3 purposes.

The Evidence

12. There is no dispute that Crescent Court was constructed as 9 flats. The application for the LDC was accompanied by a site location plan and a Supporting Statement. The site location plan shows an area of land edged red. While the appeal site is identified as '2 – 9 *Crescent Court*', it is unclear whether the area outlined in red includes 1 Crescent Court, which I understand has been sold.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

² *Moore v Secretary of State for Communities and Local Government* [2012] EWCA Civ 2101

13. The appellant claims that, once completed, the flats making up Crescent Court have been advertised for sale as sole/main residences. The appellant advises that each of the 8 no. flats has been used as short-term holiday lets to contribute to recouping the development cost. Furthermore, they advise this is a temporary use until such time as each flat is sold. The appellant further asserts that none of the 8 no. flats has been occupied by more than 4 residents at any one time.
14. The appellant has directed me to the fact that Use Class C3 makes no distinction between whether a dwellinghouse is occupied as a sole/main residence or holiday accommodation.

Reasons

15. The Council's Development Management Officer Report, tells me application reference: 20/01093/FUL granted planning permission for the '*demolition of existing dental laboratory (Use Class B1c) and erection of a part three and part two (with rooms in the roof) storey residential building to provide 9 no. apartments (2 x studio and 7 x 2 bedroom)*'. It also tells me application reference: 21/02093/NONMAT provided for '*the internal reconfiguration to replace a 1 x 1 bedroom duplex unit with a 1 x 2 bedroom duplex and removal of lift*'. However, the appellant describes the complex as providing '*2no. studio apartments, 1no. 1-bedroom duplex and 6no. 2-bedroom duplexes*.' in their Supporting Statement. These conflicting descriptions relate to the Crescent Court complex as a whole and do not confirm what scale of accommodation unit 1 Crescent Court provides. The scale of accommodation provided by the 8 no. flats cannot therefore be identified with certainty.
16. Whether or not use as short-term holiday lets falls within the scope of Use Class C3 is a matter of fact and degree, having regard to the characteristics of the visitor use. It is therefore necessary to compare the character of the current use with that of the actual previous use.
17. I am told that, once complete, the 8 no. flats have only been occupied for short-term holiday let purposes. There is therefore no former use for the characteristics of the current use to be compared to. Furthermore, I have not been provided with any details of the characteristics of the current use, such as length of stay, actual group sizes or what types of groups (families or pre-formed groups for instance) stay in the flats either.
18. The Council's reason for refusing to grant the LDC includes examples of the types of behaviour that could be associated with short-term holiday lets. However, no empirical evidence to show that these behaviours have occurred from such use of the 8 no. flats has been provided.
19. From the evidence currently available, I am unable to identify the characteristics of the existing short-term holiday accommodation use with precision. Furthermore, in the absence of evidence relating to who has occupied each flat, I am not able to conclude with certainty that each of the 8 no. flats have been occupied by people or groups living together as single households, in accordance with Class C3 of the UCO.
20. For these reasons, I find the appellant's evidence to be imprecise and ambiguous. The appellant has therefore failed to show, on the balance of

probability, that the existing use as 8 no. short-term holiday lets did not constitute development as defined in s55(1) of the 1990 Act.

Other matters

21. Both main appeal parties have made submissions on the lawfulness of the 8 no. flats themselves. I have been provided with each parties' interpretation of the various planning permissions and non-material amendment consents. I have not however been provided with copies of any decision notices, their associated plans or any as built plans.
22. The timeline of the development provided by the appellant suggests that the development was commenced in accordance with the approved details and that further approvals were forthcoming in respect of subsequent material and non-material changes to the external appearance and internal configuration of the development.
23. The letter dated 19 January 2024 to the Council from Squire Patton Boggs (UK) LLP goes further and provides details of the various Discharge of Condition applications that were approved. This includes several pertaining to a section 73 application (reference: 22/00777/FUL). The Council do not claim that the as built operational development is different to that granted planning permission, only that the apartments are being used as short-term holiday lets instead of being occupied as sole or main residences.
24. It would seem more likely than not, in the absence of any evidence to the contrary, that the development could have been completed in accordance with the section 73 planning permission. However, even if it was, this would not change my findings that an LDC should not be granted in this case.

Conclusion

25. 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 existing use of 8 no. flats as short-term holiday lets at 2 – 9 Crescent Court, The Crescent, York YO24 1AW 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).

M Madge

INSPECTOR