



Appeal Decision

Site visit made on 22 April 2025

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 May 2025

Appeal Ref: APP/V1260/X/24/3344220

21 Osborne Road, Bournemouth BH9 2JJ

- 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 McHouston Properties against the decision of Bournemouth Christchurch and Poole Council.
 - The application ref 7-2024-29116-A, dated 13 February 2024, was refused by notice dated 18 April 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (the Act) (as amended).
 - The use for which a certificate of lawful use or development is sought is the use of the property as a 5-person Class C4 House in Multiple Occupation (HMO).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to issue a LDC was well founded.

Reasons

3. Such changes of use are normally permitted development under the GPDO¹. But the Council (the former Bournemouth Borough Council) introduced an Article IV Direction which came into force on 16 December 2011, which takes away such permitted development rights. The new BCP Council, as the successor Local Planning Authority, retains such rights. Planning permission is therefore required for such a change of use. Hence the appellant's submission of this LDC application.
4. S171B of the Act sets out the time limits or immunity periods for taking enforcement action against uses that have not gained planning permission. For Class C4 uses, the immunity period is 10 years, as set out in S171B(3). Therefore, in order for a S191 LDC to be granted in this case, the appellant must evidence that the property has been continuously occupied as a Class C4 HMO for a period of 10 years prior to the submission of the application. The burden of proof falls on the appellant, on the balance of probability.
5. However, the appellant has not done so. On the contrary, the application form merely states that it has been let out to students since September 2018. Mr Houston-McMillan told me at the site visit that he acquired the property in 2018 and that the previous owner could not provide him with any documentation to show

¹ The Town and Country Planning (General Permitted Development) Order 2015

that it had previously been used as an HMO before. That is only a 6-year period of continuous occupation as an HMO.

6. Whilst that may be the case, in order for me to grant a Class C4 HMO use LDC for this property it is necessary for me to have evidence that it has been used continuously for a 10-year period as such. I have not been provided with any such evidence and I cannot therefore grant such a LDC, irrespective of the fact that the Council has apparently granted a License for a 5-person HMO (Ref 23/3389 dated 1 December 2023).

Conclusion

7. For the reasons given above, I conclude that the Council's refusal to grant a LDC was well-founded and that the appeal must fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Nick Fagan

INSPECTOR