

Appeal Decision

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Appeal Reference:	2021/E0048
Appeal by:	Mr Harry Gannon
Appeal against:	The refusal to certify a Certificate of Lawfulness of Existing Use or Development.
Proposal:	House in Multiple Occupancy (HMO).
Location:	26 Castlereagh Place, Belfast BT5 4NN
Planning Authority:	Belfast City Council
Application Reference:	LA04/2021/0827/LDE
Procedure:	Written Representations with Commissioner's site visit on 4 October 2022
Decisions by:	Commissioner Mandy Jones, dated 10 October 2022

Decision

1. The appeal is allowed and a Certificate of Lawfulness is attached.

Preliminary Issue

2. Within the appellant's evidence bundle additional information in support of the case was submitted. The Council argued in their Rebuttal Statement that this additional information should have been presented during the processing of the Lawful Development Certificate (LDC) and its inclusion within this appeal is contrary to Section 59 of the Planning Act (Northern Ireland) 2011 (the Act).
3. Section 59 of the Planning Act relates specifically to appeals made under Section 58 only. It is not applicable to appeals made under Section 173 of the Planning Act. Accordingly, this additional information is admissible and will form part of my considerations.

Reasons

4. A Lawful Development Certificate is a statement specifying what was lawful on a particular date. The application for a Certificate of Lawfulness for an existing use or development (CLEUD) was received by the Council on 24 March 2021 in accordance with Section 169 of the Planning Act. This appeal was made under Section 173 of the Planning Act against the Council's refusal to certify.
5. Section 169 of the Planning Act makes provision for the issue of an CLEUD. Section 169 (1) states that ' if a person wishes to ascertain whether – (a) any existing use of buildings or other land is lawful ... that person may make an application for the purpose to the appropriate Council specifying the land and describing the use, operations or other matter'. Section 169 (2) indicates that ' for

the purposes of this Act uses and operations are lawful at any time if – (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason) ; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force ‘. Section 169 (4) states that ‘ if, on an application under this section, the Council is provided with information satisfying it of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the Council or a description substituted by it, the Council must issue a certificate to that effect; and in any other case it must refuse the application.’

6. Section 132 of the 2011 Planning Act refers to time limits for taking enforcement action against breaches of planning control. Subparagraph (1) relates to operations. Subparagraph (2) refers to changes of use to dwellings. Section 132 (2) refers to all other types of development and states ‘ in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach’.
7. In the case of an application for a CLEUD, the onus is on the applicant to provide evidence of the lawfulness of the use or development cited in the application forms. The issue in this case, therefore, is whether the submitted evidence is sufficient to demonstrate, on the balance of probabilities that the property has been used continuously for the described use for a period of 5 years or more at the time of the application.
8. The Council refused to certify that on 24 March 2021 the use of the property as a HMO at 26 Castlereagh Place, Belfast was lawful. The reason cited was that having considered the information provided, they were not satisfied that sufficient evidence has been submitted that the property was in continuous use as a HMO for more than 5 years up to and including the date of application. The Council considered that the use is not immune from enforcement action and considered unlawful.
9. Immunity from enforcement action could also be achieved if the use had been continuous for the requisite period at some time in the past and had not been abandoned or superseded by another use at the time the lawful development certificate application was made.
10. A HMO is defined in Section 1 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 as a building that : is living accommodation; is occupied by 3 or more persons as their only or main residence; those persons form more than 2 households; and rent is payable (or other consideration is to be provided) in respect of the occupation by at least one of those persons. The Council disputes the appellant’s claim that the property has been in use as an HMO for a continuous period of 5 years or more.
11. The Council acknowledged that records from the NI HMO team show that the property was registered as an HMO from 26.08.2014 to 26.08.2019 and from 26.08.2019 to 26.08.2024. The appellants statement of case included the following:

- Statutory Registration scheme certificate for a HMO, for the period 26 August 2019 to 26 August 2024 ;
 - Statement from H Gannon (Landlord)- citing the following ;
 - Property was purchased over 10 years ago and since then has been used as shared accommodation with 5 bedrooms,
 - Claims that he has installed a comprehensive 3 floor zone fire alarm system with 3 smoke detectors per floor, 3 alarm sounders, 4 fire alarm call points, 5 heat detectors, fire resistant doors with door closures and intumescent strips, 3 water fire extinguishers, 1 carbon dioxide extinguisher, fireproofing to kitchen ceiling, fire escape windows and fire blankets. (Certificates not submitted),
 - Claims that he has Fire alarm certification, electrical system certification, electrical appliance certification, energy performance certification, fire extinguisher certification, heating boiler certification. (Certificates not submitted),
 - Claims that the property has never been vacant.
 - Statement from J Currie (tenant from 2009) – citing the following ;
 - He has lived at the property since 2009 and provided 3 documents to verify his address (Rangers Supporters Card (2011), College documents (2015) and Bank Statement (2014)),
 - Claims that dozens of people have lived in the property,
 - Claims that since 2015 each of the 5 tenants were given a tv and Virgin Media box and in 2015 each bedroom received a mini fridge and tea and coffee making facilities,
 - Selected Virgin Media Bills from 2016, showing package bundles including main box and an additional 4 set top boxes,
 - 38 Tenancy agreements signed from August 2014 through to November 2020 – each with varying terms (of 2/3/4/5/6 and 12 months). Tenancy agreements dated 22 August 14, 15 September 2014, 30 September 2015, 29 July 2015, 1 June 2015, 6 July 2015, 2 April 2015, 15 February 2015, 24 February 2015, 2 January 2015, 1 February 2016, 26 May 2016, 5 September 2016, 9 June 2016, 4 July 2016, 6 February 2017, 23 June 2017, 21 May 2017, 7 June 2017, 9 March 2017, 13 January 2018, 24 November 2018, 10 June 2018, 15 November 2018, 8 December 2018, 24 May 2019, 31 July 2019, 21 Jan 2019, 28 January 2019, 22 January 2019, 6 September 2019, 21 January 2019, 16 February 2019, 3 June 2019, 5 March 2020, 16 October 2020 and 18 November 2020.
12. The Council claim that the tenancy agreements show significant gaps in occupancy where 2 or less people have resided at the property and identified the following time periods : March 2016 – June 2016 (4 months) , July 2018 – November 2018 (4 months) and February 2019 – December 2019 (11 months). I accept the appellant's position that many tenancy agreements rolled on from month to month, were extended and the tenant was subject to the same terms and conditions. As such, it was argued, there was no need to sign a new tenancy agreement. I accept this is a reasonable and common practice.
13. Continuous use does not necessarily mean constant and uninterrupted use. The settled view of the Commission is that regular, weekly, or monthly use could constitute 'continuous use' for the purposes of establishing lawfulness depending on the specifics of the case. In my opinion, within a registered HMO, vacancies between tenancies could be discounted when assessing lawfulness, if the period

was relatively short and the use of the property by other tenants continued - which refers to these identified gap periods.

14. I accept that there are short periods where occupancy dropped, however these do not equate to the property's use as a registered HMO having stopped, abandoned or superseded by another use. Having reviewed all of the evidence presented, including the HMO registration details, tenancy agreements and undisputed evidence by the appellant and his tenant since 2009, I am persuaded that on the balance of probabilities, the use of the property as an HMO has been continuous for a period of not less than 5 years prior to the submission of the CLEUD application (on 24 March 2021). I therefore attach a Certificate of Lawfulness of Existing Use or Development.

COMMISSIONER MANDY JONES

List of Documents

Appellant: 'A' Statement of Case

Council: 'B' Statement of Case

'B1' Rebuttal.

CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT

The Planning Appeals Commission hereby certifies that on 24 March 2021 the matter described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate was lawful within the meaning of section 169 of the Planning Act 2011, for the reasons set out in the appeal decision to which this certificate is attached.

COMMISSIONER MANDY JONES

10 October 2022

FIRST SCHEDULE

House in Multiple Occupancy (HMO)

SECOND SCHEDULE

26 Castlereagh Place

Belfast BT5 4NN

(as identified on drawings 01,02,03 relating to application reference LA04/2021/0827/LDE and stamped received by Belfast City Council on 18 March 2021)

Notes:

(1) This certificate is issued solely for the purpose of section 169 of the Planning Act 2011.

(2) It certifies that the matter described in the First Schedule taking place on the land described in the Second Schedule was lawful on the specified date and, thus, was not liable to enforcement action under Section 138 or 139 of the Planning Act (Northern Ireland) 2011 on that date.

(3) This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule. Any use/operations/matters which are materially different from that described or which relates to other land may render the owner and occupier liable to enforcement action.