
Application Number	12/1431/CLUED	Agenda Item	
Date Received	16th November 2012	Officer	Mr Amit Patel
Target Date	11th January 2013		
Ward	East Chesterton		
Site	70 Green End Road Cambridge Cambridgeshire CB4 1RY		
Proposal	Application for a certificate of lawfulness under Section 191 for use in multiple occupation (sui generis).		
Applicant	Mr Luigi De Simone 11 St Barnabas Road Cambridge CB1 2BU		

Delegated Report

Site Description and Area Context

The property is located on the eastern side of Green End Road close to the junction with Nuffield Road. The property has land to the front, which is used for car parking and land to the rear used for garden. The building is detached and finished in brick with a tiled roof.

Description of Application

This is an application for a Certificate of Lawfulness for the use of 70 Green End Road as a HMO with 9 bedrooms. This application seeks the certificate to be granted on the basis that the use has been carried out for ten years continuously without conforming to condition 3 attached to the approval under planning reference C/87/1104, which required that only 4 guest bedrooms could be used as guest accommodation and rest of the property as residential.

The application is supported by the following evidence:

1. Personal Affidavit
2. Previous Employee Statement

The application is made under Section 191 of the Town and Country Planning Act 1990.

Site History

Reference	Description	Outcome
C/86/0643	Erection of two storey and single storey extension to existing dwelling house. (amended by drawings dated 14/8/86, 12/12/86, 20/07/87 and 05/10/90).	Approved with conditions
C/87/1104	Change of use from single dwelling house to part residential/part bed and breakfast accommodation.	Approved with conditions
C/01/0105	Two storey and single storey rear extension to Guest House providing 3 additional guestrooms.	Refused
C/01/1025	Single storey rear extension to Guest House to provide residential accommodation for the owner/manager; conversion of existing building from four guest bedrooms to 7 guest bedrooms.	Refused
C/01/1021	Section 73 application to allow use of 70 Green End Road without compliance with condition 03 of the Planning Permission C/1104/87, namely as a guest house with 7 guest bedrooms rather than 4	Refused

Assessment

This is an application made under S191 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness for:

Use of the property as a large HMO without complying with condition no.3 of planning permission C/87/1104. The condition stated:

*'The maximum number of guest rooms shall at no time exceed 4.
Reason: To protect the amenities of adjoining properties.'*

It is the applicant's case that the property has been used throughout the ten years preceding this application as a large HMO with 9 bedrooms, and that condition 3 of C/87/1104 has not been complied with at any point during this period.

The applicant has submitted personal statements, and copies of letters from various Council departments:

- Personal statement from Luigi De Simone
- Personal statement from Antonio Luigi De Simone
- Letter from Jane Slater (worked as Manager at 70 Green End Road) dated 6th November 2012
- Letter from Michelle Jordan (Environmental Health) dated 7th March 2005
- Letter from Yvonne O'Donnell (Housing Standards) dated 7th July 2005
- Certification of HMO dated 7th July 2005 expiring 7th July 2010
- Letter from WB Viles (Planning Investigation) dated 14th July 2005

From the above submitted documentation the applicant seeks to demonstrate that a ten year continuous use has been established for the property in breach of condition 3 of C/87/1104.

It is for the applicant to demonstrate on a balance of probabilities that the use has continued for the preceeding ten years, and the burden of proving this is (in the words of Circular 10/1997) 'firmly on the applicant'.

I have read the information provided to me by the applicant very carefully and mindful of the above test and having sought legal advice I have reached the view that the applicant has failed to discharge the burden of proof upon him.

I have arrived at this conclusion for the following reasons:

1. Most of the correspondence from the council which the applicant relies on is dated between March and July 2005. This does not address the burden of proof of ten years continuous use, as there is no independent evidence of the use prior to this date.
2. The statement of Luigi De Simone in paragraph 4 states that Mr Viles (of the Council's Planning Investigation Team) had conceded that the property benefits from the established use. However the letter from Mr Viles dated 17th July 2005 states the opposite: i.e. that the property needs to be restored to the approved scheme of 4 bedrooms as guest accommodation with the rest of the house as residential, as approved under planning reference C/87/1104. Also in paragraph 4, Mr Luigi De Simone states that the property has been used on a HMO basis since 1999. However my independent investigation has discovered a letter from John Holt (Housing Standards

Technical Officer) to Mr L De Simone dated 24th April 2001. This letter states that Green End Road Guest House will not be assessed as a HMO 'as you have decided not to take people from Cambridge City Council', which conflicts with paragraph 4 of Mr L. De Simone's statement. I do not consider that Mr Luigi De Simone's statement is sufficient to demonstrate that, on the balance of probability, ten years continuous use of the property as a large HMO, in breach of condition 3 of permission C/1104/87, has taken place.

3. Antonio Luigi De Simone states in paragraph 4 that in late 2000 or early 2001 they received referrals from City Council. However, the letter from Mr Holt which I have quoted above, appears to contradict this paragraph of Mr A. L. De Simone's statement. The Inspector's decision notice on the appeal on C/01/1021/VC, dated 13th June 2002 also seems, in paragraph 11, to contradict Mr A. L. De Simone's statement. I do not consider that Mr Antonio De Simone's statement is sufficient to demonstrate that, on the balance of probability, ten years continuous use of the property as a large HMO, in breach of condition 3 of permission C/1104/87, has taken place.
4. The letter from Jane Slater of 06.11.2012 is insufficient evidence because, inter alia, there are discrepancies concerning the use. There is no clear statement as to the number of rooms used, and the letter appears to contradict the Inspector's decision notice of 13.06.2002, in which he states that part of the house was used and occupied as manager's accommodation and associated offices. I do not consider that Ms Slater's letter is sufficient to demonstrate that, on the balance of probability, ten years continuous use of the property as a large HMO, in breach of condition 3 of permission C/1104/87, has taken place.
5. Neighbours have stated that the use with 9 bed rooms has not been continuous and their submission seems to correlate more closely with the Planning Inspector's comments in his appeal decision than the applicant's statement does.

Although the information seeks to demonstrate that there has been a 10 year continuous use of the property as a large HMO in breach of condition 03 of permission C/1104/87, having looked at all the relevant information, I conclude that the information, is not sufficient, on balance of probability, to prove that there has been a 10 year

continuous use. Furthermore, there is no independent documentation, such as individual receipts of rooms let or accounts, to verify such continuous use, which might swing the balance of probability into the favour of the applicant.

Conclusions

Having taken into account the information supplied by the Applicant and having made independent investigations the application for a Certificate of Lawful Development should not be granted.

Recommendation

That a Certificate of Lawfulness not be granted under Section 191 of the Town and Country Planning Act 1990 (as amended) for use as a large HMO with 9 bedrooms in breach of condition 03 of C/1104/87 at 70 Green End Road, Cambridge for the following reasons:

1. It appears to the Local Planning Authority that insufficient evidence has been submitted to demonstrate that the property has been used continuously as a large house in multiple occupation with 9 bedrooms in breach of planning condition 03 of permission C/1104/87, for a period of ten years.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Under Section 100D of the Local Government Act 1972, the following are background papers for each report on a planning application:

1. The planning application and plans;
2. Any explanatory or accompanying letter or document from the applicant;
3. Comments of Council departments on the application;
4. Comments or representations by third parties on the application as referred to in the report plus any additional comments received before the meeting at which the application is considered; unless (in each case) the document discloses (exempt or confidential information)
5. Any Structure Plan, Local Plan or Council Policy Document referred to in individual reports.

These papers may be inspected on the City Council website at:

www.cambridge.gov.uk/planningpublicaccess

or by visiting the Customer Service Centre at Mandela House.