

COMMITTEE REPORT

Date: 6 August 2015 **Ward:** Clifton
Team: Householder and **Parish:** Clifton Planning Panel
 Small Scale Team

Reference: 15/01033/CLU
Application at: 33 Upper Newborough Street York YO30 7AR
For: Use as a House in Multiple Occupation for up to 4 occupants
 within use class C4
By: Mr Keith Cullwick
Application Type: Certificate of Lawful Existing Use
Target Date: 26 June 2015
Recommendation: Grant

1.0 PROPOSAL

1.1 The application property is a two storey mid-terrace dwelling located within a residential area to the north of the city centre.

1.2 The application is for a Certificate of Lawfulness for use as a house in multiple occupation. The background to the consideration of the application is that on 20 April 2012 an Article 4 direction came into force requiring planning permission for the change of use from Use Class C3 (Dwellinghouse) to Use Class C4 (House in Multiple Occupation) for properties within the York's outer ring road. Prior to the Article 4 Direction, planning permission was not required to change the use of the dwelling to a House in Multiple Occupation. The Applicant seeks to prove on a balance of probability that the property has been occupied as a House in Multiple Occupation (HMO) prior to 20th April 2012, and that the use has not subsequently been abandoned.

1.3 There is no planning history relevant to the consideration of this application.

1.4 The application is to be determined by sub-committee because the applicant's agent is a City of York Councillor.

2.0 POLICY CONTEXT

2.1 Development Plan policies are not relevant to the consideration of an application for a certificate of lawful use or development.

3.0 CONSULTATIONS

Publicity and Neighbour Notifications

3.1 No comments have been received

Clifton Planning Panel

3.3 No comments have been received.

4.0 APPRAISAL

KEY ISSUES

4.1 On 20 April 2012 an Article 4 Direction revoking permitted development rights for the change of use of a Use Class C3 (Dwellinghouse) to Use Class C4 (House in Multiple Occupation) came into force for the City of York Council area. The only issue in the determination of this application is whether the applicant has demonstrated, on the balance of probability that the existing use of the site as a House in Multiple Occupation commenced at a point prior to 20 April 2012 and has continued in such use until the present date.

4.2 National Planning Policy Framework (NPPF) Planning Practice Guidance relating to lawful development certificates (Paragraph 006) states that, in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

EVIDENCE IN SUPPORT OF THE APPLICATION

Council Tax Records

4.3 Council Tax has advised that the property has been tenanted since at least 2005 but their records do not confirm that there have been at least 3 unrelated tenants in continuous occupation.

Tenancy Agreements

4.4 The applicant has submitted extracts from copies of 40 tenancy agreements where names of tenants and their signatures are supplied. These cover the period between August 2001 and February 2012, but there are gaps in the evidence in respect of physical occupation.

One of the extracts (i.e. the final one) is for 4 tenants and covers the period for 6 months from 1 September 2011 (i.e. it is assumed until the end of February 2012). All the others are single person tenancy agreements. From 2001 to 2003 the tenancy agreements were between 11 and 12 months duration. From 2004 onwards they reverted to a 6 month agreement.

4.5 The agreements indicate that the property has been used as an HMO by seemingly unrelated persons since 2001 and that there was at least 3 tenants living together between August 2002 and July 2003 and potentially between June 2005 and December 2006 and August 2009 and March 2010. However, they do not show that it has been occupied by at least 3 unrelated persons for the rest of this period.

4.6 There is also a gap in the documentation with no agreement covering the period between 31 July 2003 and 8 October 2004. In addition, there are only 2 agreements that cover the period between 8 October 2004 and 20 June 2005; 1 for 1 tenant from 8 October 2004 to 8 April 2005 and the other for 1 tenant from 1 January 2005 to 30 June 2005.

Sworn Affidavits

4.7 The applicant has provided a sworn affidavit in which he states the following. He commenced renting out the property on a room by room basis in 2000. For several years it was let to 3 or 4 York St John University students until 2005. From this point on it was let to groups of 3 or 4 young people working or claiming benefits with never less than 3 or 4 sharers at any time. The property was empty for a short period between July and September 2011 when refurbishment was undertaken and then occupied by 4 tenants until April 2012. In June 2012 he entered into a 6 year tenancy agreement for 3 to 4 individuals to use the property as a shared house with a charity which provides residential accommodation.

4.8 The applicant's agent (brother-in law of the applicant) has provided a sworn affidavit in which he states the following. His brother-in law purchased the property in 2000 and let it to 3 or 4 students at a time until 2005 when it was let to groups of 3 or 4 young people working or claiming benefits with never less than 3 or 4 sharers at any time. He also confirms the applicant's statements regarding refurbishment of the property, use by 4 tenants after this and the details of the June 2012 tenancy agreement.

Non Payment of Rent Correspondence

4.9 Three letters pertaining to non payment of rent by tenants have been supplied these date from 27 July 2004, 22 July 2009 and the third has no date.

Statement by the Charity

4.10 The Chairman of the charity has submitted a letter confirming the charity has entered into a tenancy agreement with the applicant and that the property has been continuously used as an HMO since the lease was agreed. He advises that it was clear to him on first inspection that the property had been used as an HMO prior to 2012.

Council Tax Notice

4.11 This notice outlines that a 25% discount was awarded for single occupancy of the property between 30 June 2011 and 13 July 2011 and that it was unoccupied between 14 July 2011 and 1 September 2011.

Yorkshire Water Bill

4.12 This bill outlines payments that were made to Yorkshire Water between 1 April 2012 and 1 January 2013.

EVIDENCE AGAINST THE APPLICATION

4.13 No.33 Upper Newborough Street is not currently listed as being an HMO on the Council's HMO database. There is an evidential gap in respect of the periods of occupation.

ASSESSMENT

4.14 The submitted evidence indicates that the property has had sitting tenants for a considerable number of years and since at least 2001. The tenancy agreement documents do not show that it has been occupied continuously over the years and both this and Council Tax records indicate short periods of non-occupation have occurred. In addition the applicant advises that the property was vacated sometime in April 2012 and not re-occupied until June of that year (Paragraph 4.7 above), so there is no definite confirmation that the property was occupied by tenants on 20 April 2012.

4.15 Whilst there is no direct evidence to show beyond reasonable doubt that the property was continuously occupied as an HMO for the relevant period, this is not the appropriate evidential test. The evidential test is a lesser burden, that of the balance of probability. It is clear that the property has had use as an HMO for many years and the both the applicant and the applicant's agent have provided sworn affidavits which state that there has never been less than 3 tenants at any time apart from the short periods between July and September 2011 and April and June 2012.

4.16 Applying the evidential test, on a balance of probability it is considered that the evidence supplied in the form of affidavits with the application establishes that an HMO occupied by up to 4 occupants within the C4 Use Class was established at the property on the key date of 20th April 2012 and had continued until the date of the application.

5.0 CONCLUSION

5.1 The Council is satisfied that, on a balance of probability, the property was in use as a House in Multiple Occupation within use class C4 by up to 4 occupants on 20 April 2012, prior to the introduction of the Article 4 Directive removing permitted development rights for changes of use between Use Class C3 (Dwellinghouse) and Use Class C4 (House in Multiple Occupation), and that the use continued as such at the date of this application. A Certificate of Lawful Development for this use is therefore justified.

6.0 RECOMMENDATION: Grant

Contact details:

Author: David Johnson Development Management Assistant

Tel No: 01904 551665