
Appeal Decisions

Site visit made on 5 July 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 July 2017

Appeal A - Ref: APP/G5750/X/16/3164454 97 Clova Road, Forest Gate, London E7 9 AG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Osman Yusuf against the decision of the Council of the London Borough of Newham (the LPA).
 - The application Ref 16/01936/CLP, dated 2 August 2016, was refused by notice dated 27 September 2016.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use is sought is the proposed recommencing of the use of the property as a house in multiple occupation (HMO - Class C4).
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Appeal B - Ref: APP/G5750/X/16/3164456 99 Clova Road, Forest Gate, London E7 9AG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Osman Yusuf against the decision of the Council of the London Borough of Newham (the LPA).
 - The application Ref 16/01937/CLP, dated 2 August 2016, was refused by notice dated 27 September 2017.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use is sought is the proposed recommencing of the use of the property as a house in multiple occupation (HMO - Class C4).
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Background information and matters of clarification

3. The appeals relate to adjacent properties at Nos 97 and 99 Clova Road. They comprise a pair of 2 storey semi-detached houses on the northern side of the road. This part of Newham is characterised by similar residential properties of the same age and design. The Council confirms that the appeal sites have no specific land use designation or policy constraints; that the properties are not within a conservation area and that they are not listed buildings.

4. The LDC applications, in both cases, sought a certificate for the proposed '*recommencing of the use of the properties as Houses in Multiple Occupation (HMO)*'. That is, that the existing lawful use of the two properties at the time of the

applications was as two HMOs. Both applications were for the proposed use of the ground and first floor as 6 bedrooms, with lounge and kitchen areas on the lower ground floors. The two properties have been the subject of various planning applications and enforcement investigations. These are set out in the two delegated reports for the LDC applications, dated 27 September 2016. There is no need to repeat these in detail here, but I refer to the most relevant aspects of the planning history below.

5. The Council has indicated that there is no evidence that Nos 97 and 99 have previously been in an established lawful use as a single or combined HMO. Although there was permission in 1997 for conversion of one property to a 6 person dwelling house and the other to a 5 person dwelling house, a condition was imposed requiring that the dwellings were occupied by single households. An Article 4 Direction is also in place which removes permitted development rights for the change of use from Class C3 (Dwelling House) to Class C4 (HMO).

6. In 2015, two appeals against enforcement notices relating to Nos 97 and 99 were dismissed. The first notice was issued following an unauthorised change of use of both properties to a hotel. The second related to a change of use from Class C2 (residential institutions) to Class C4 (HMO). In the latter appeal the Inspector accepted that a C2 use had occurred over a period of some 14 years. It was also acknowledged that at the time of the former appeal, the properties were in use as a hotel. Since the outcome of the two appeals, permission was refused on 2 June 2016 for the change of use of Nos 97-99 to a 12 bedroom HMO (Use Class C4).

7. Although there are two separate LDC applications/appeals (one for each property) they are inextricably linked in that the planning history and most of the evidence submitted in support of the LDC applications relates to both properties. Thus, although I have considered each appeal on its own merits, in reaching my decisions I have taken into account the full planning history of both Nos 97 and 99 and the various documents submitted. This is in line with each of the grounds of appeal and the Council's submissions. There are no later statements or third party comments submitted for either appeal.

8. The appeal/application drawings are confusing and inaccurate in part. However, during my site visit, the existing layouts for both properties were noted and agreed. The current layout for No 97 is as shown on drawing number 00186, sheet 1/3. This had a note entitled '*A. Room No as required by Plg Dept 4/7/16*'. It had the wrong address stating the property to be No 99. On the lower ground floor, the drawing shows a kitchen to the front and a dining room to the rear. The latter room had been split into two rooms. On the ground floor there were three separate rooms (the front one labelled '*Reception*') each of which had some form of bathroom/wc facility. On the first floor there were four more rooms with shared bathroom/wc facilities. The numbers on the various doors were stated to have been the hotel use room numbers.

9. The layout at the time of my site visit for No 99 is that shown on Drawing Number 00187, sheet 1/3. On the ground floor this showed two rooms each with en-suite facilities. The front room was labelled '*Reception*'. On the second floor there were 3 bedrooms and again each had en-suite facilities. The lower ground floor had two main rooms, a dining room and a kitchen. The drawing entitled '*proposed*' for No 97 was numbered 00187, sheet 2/3. It showed lounge and kitchen facilities to the lower ground; two rooms and a library to the ground floor and four more rooms to the first floor. The proposed drawing for No 99, numbered 00186, sheet 2/3 showed a lounge, kitchen and small pantry to the lower ground floor; two rooms with shared bathroom to the ground floor and 3 more rooms to the first floor. Thus No 97

showed a proposed layout for 6 rooms with No 99 only having a total of 5 rooms as opposed to both LDC applications relating to 6 rooms.

Reasons: Appeals A and B

10. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the LPA's reasons for refusal and then deciding whether or not the reasons are well-founded. The planning merits of the case do not fall to be considered. In any LDC application, an applicant is required to provide evidence that is sufficiently precise and unambiguous to justify the grant of a certificate '*on the balance of probability*'. The burden of proof is firmly on the applicant and a LPA must be supplied with sufficient information to satisfy them that the proposed development (in this case the use of each property as a HMO) is/was lawful at the date of the application(s).

11. In relation to these appeals the question to be asked in each case is whether or not the appellant has shown, on the balance of probabilities, that the use of each property as a HMO (Use Class C4) was lawful for planning purposes on the date the applications were made (2 August 2016). In order to be lawful it must be shown that the properties have either separately and/or jointly been in continuous use as HMOs only, for a continuous period of 4 years prior to the date of the applications. The relevant date is, therefore, 2 August 2012. Thus the evidence needs to show that between 2 August 2012 and 2 August 2016 both Nos 97 and 99 have been continuously and solely in HMO use.

12. Unfortunately the evidence submitted in support of the applications does not show that this has been the case. It is clear that the appellant purchased the properties on 14 February 2014. At that time the LPA searches, carried out by the appellant's solicitor, indicated that although No 99 was in use as a HMO (not lawfully according to the LPA), No 97 was used as a care home. This latter use is in Use Class C2 which is a different use to a HMO. Other submitted exhibits (in the form of Care Quality Commission reports) indicate that both Nos 97 and 99 had been in use as a residential care home (Class C2) between 2004 and 2013. It cannot be the case, therefore, that No 97 was in continuous HMO use only, for the necessary 4 year period if, for part of the time, it was in use as a residential care home.

13. A class C2 use is not the same as a HMO, Class C4 use and, even if No 99 had also been used as a HMO since 2 August 2012, on the basis of the evidence, the use of the property would have been a mixed use comprising part care home/institutional residential use (Class C2) and part HMO (Class C4). Again, therefore, this means that No 99 could not have been in continuous use as a HMO only for the necessary 4 year period to render it lawful at the time of the application.

14. Another factor, again evidenced by the detailed submissions, dictates against both properties being in continuous use as HMOs for the necessary four year period. This is the fact that in March 2014 both premises were rented to a tenant who breached the terms of the lease and used both Nos 97 and 99 for a hotel use. There is no dispute that this unlawful change of use occurred and that enforcement action was taken. Again, therefore, there was a significant break whereby neither property could be said to be in use only as a HMO for the necessary continuous 4 year period.

15. On the facts of both cases, therefore, I can only conclude that neither No 97 nor No 99 had been in continuous use as a HMO only, between 12 August 2012 and the date of the applications, 12 August 2016. It follows that, in both cases, I consider that the Council's decision not to issue a LDC was well-founded and that both appeals must fail. Despite any previous HMO use of the properties (which in any case have not been shown to be lawful), the relevant and necessary continuous periods of use

as separate HMOs have not been met. LDCs cannot therefore be issued on the basis of the applications made.

Other Matters

16. I sympathise with the appellant's current predicament. Through the actions of a tenant both Nos 97 and 99 have been used unlawfully. However, this does not alter the fact that the evidence before me clearly indicates that the properties had not been in continuous use, only as HMOs, for the 4 year period prior to the applications for the LDCs being made on 2 August 2016.

17. I also note that, although the planning application for change of use to HMO use was refused, the applications were made at the suggestion of an LPA officer. I acknowledge that the appellant is aggrieved at this decision and by the Council's actions. However, I am only empowered to deal with these two LDC appeals. Any further matters are outside of my remit and must be for the appellant and the Council to consider.

18. In reaching my decisions I have taken into account all of the other matters raised by the Council and on behalf of the appellant. These include the full planning histories of the properties; the delegated reports, the grounds of appeal and the detailed submissions/exhibits made in support of the applications/appeals.

19. However, none of these outweighs my conclusions that, on the balance of probabilities, the appellant has not conclusively shown that the use of the two properties as HMOs was lawful on the date of the applications. Nor is any other factor of such significance so as to alter my decisions in these two appeals.

Anthony J Wharton

Inspector