

Appeal Decision

by Anthony J Wharton BArch RIBA RIASI

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

Decision date: 10 August 2020

Appeal Ref: APP/T5150/X/20/3247293

2 Dawpool Road, London NW2 7LB

- 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 David Narunsky against the decision of the Council of the London Borough of Brent.
 - The application Ref 19/3251, dated 12 September 2019, was refused by notice dated 1 November 2019.
 - 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 or development is sought is:
The change of use from a single dwelling (Use Class C3) into a 6 person HMO (Use Class C4).
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Decision

1. The appeal is allowed and a Lawful Development Certificate is attached below.

Matter of clarification

2. Further to the case officer's letters to the parties and their agreement, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the initial submissions, supplemented by additional information being supplied. This additional information included confirmation of the specification and use of the proposed 'Elfin Units' in the property. It is on this basis that I have dealt with the appeal and in doing so I am satisfied that no injustice will be caused.

Background information

3. The two storey, end of terrace appeal property is located on the northern side of Dawpool Road at its junction with Links Road. The house has previously been extended with a flat roof single storey rear extension. The existing building contains a total of 4 rooms at ground floor level and 5, including bathroom, at first floor level. The layout as existing is as shown on the LDC application drawing.
4. In June 2018 a planning application was submitted for the construction of an end of terrace house on land adjacent to No.2 (Ref: 18/2283). However, this was withdrawn prior to its determination. In November 2018 permission was granted (Ref: 18/3809) for a part single, part two storey side and rear extension and a loft conversion. This permission has not been implemented.
5. The application to which this LDC appeal relates is based on a change of use of the existing dwelling from a single dwelling (Use Class C3), into a 6 person HMO (Use Class C4). However, before the determination of this application (1 November 2019), another application for a LDC was submitted to the LPA (19/4113). This was approved

by the LPA and was for the same proposed change of use of the appeal property to a small six room/six person HMO (Class C4) (Ref: 19/4113).

6. Although the two LDC applications are for the same proposed HMO use, the detailed layouts and proposals are different. Both applications proposed a total of 6 ensuite bedrooms. The earlier application (Ref: 19/4113) showed two kitchens and a laundry on the ground floor, as well as the 3 ensuite rooms and 3 ensuite rooms and three small stores to the first floor. The approved plans are stated to show 6 'Elfin Units' in the two shared kitchens; a ratio of one per letting room. These are arranged with four in the main kitchen and two in the smaller kitchen.

7. This appeal application (19/3251), on the other hand, showed just one kitchen, the 3 ensuite rooms and 3 small spaces for 'Elfin Units' at ground floor level, and the same at first floor level. In both cases the 'Elfin Units' are shown as being accessed from the common circulation spaces (ground floor hall and first floor landing) as opposed to directly from the 6 rooms. The units shown on the drawing appear to be 1200 wide.

The gist of the case for the appellant

8. Reference is made to Use Class C4; its insertion into the Town and Country Planning (Use Classes) Order in 2010 and Section 254 of the Housing Act 2004. It is contended that the proposed layout, with ensuite shower rooms and separate Elfin Units and all occupants sharing a main kitchen, meets the tests in sub section (2) of Section 254.

9. These tests include that the proposed accommodation does not contain any self-contained flats; that the property will be occupied by persons who do not form a single household; that the accommodation will provide the main resident of the occupants and that two or more of the households who occupy the living accommodation will share one or more basic facility. In this case the basic facility is the main kitchen and this constitutes a basic amenity as outlined in sub-section 8 of section 254.

10. It is also argued that the proposal also meets the '*converted building test*' in sub-section (4) of Section 254 and that it does not fall into any of the categories whereby sub-section (5) cross-references to the Housing Act 2004. It is stressed that the proposals contain exactly the same number of 'Elfin Units' as the approved development with the only difference being that, for the approved scheme, the Elfin units are located within the communal kitchens whereas the proposals the subject of this appeal have each Elfin Unit in a separate room accessed directly either from the ground floor common hallway or first floor landing. In terms of the facilities the application proposal, therefore, provides the same as for the recent permission with the Elfin units provided on the same ratio of one per bedsitting room/occupant.

11. It is stressed that none of the individual letting units would be self-contained; that none has a separate kitchen and that, although the Elfin Units would incorporate a microwave and food storage for each tenant, the ovens and hobs would be in the main shared kitchen at ground floor level where all primary cooking would be carried out. There would also be shared laundry facilities in the main kitchen.

12. Reference is made to similar situations in the Borough where the Council has issued LDCs for conversion from Class C3 dwellings to Class C4 HMOs. These include the properties at 12 Heather Road (ref 19/1879); 123 Nutfield Road (ref 19/2754) and 50 Dawpool Road (ref 19/1933). In refusing this application it is contended that the Council is being inconsistent. A legal opinion is submitted in support of the appellant's case (Appendix E to appeal statement).

The gist of the case for the Council

13. The submitted drawings indicate the provision of 6 individual bedrooms with ensuite facilities. There are also 6 individual 'Elfin' kitchens and one communal kitchen. A C4 Use (small HMO) can be defined as a dwellinghouse used by 3-6 residents who share one or more basic amenities. In this case each of the bedrooms would have access to their own ensuite bathroom. Furthermore, whilst not within the rooms themselves, each resident would also be allocated their own individual 'Elfin' kitchen unit contained within separate rooms. Such units generally incorporate a combi-microwave oven; a sink; hotplates and dry storage.

14. Whilst a communal kitchen has been provided at ground floor, it is not understood why this is necessary or what purpose it would serve, given the provision of 6 individual 'Elfin' kitchens for the 6 residents. It is therefore considered that its use as a shared amenity would essentially be redundant, and rather than serving its purpose as a shared space it is a token addition to try and meet the criteria of a C4 HMO use.

15. In this case it is argued that all of the residents would have access to their own basic amenities and therefore the proposal is effectively for, and would function as, separate flats and not as a Class C4 HMO. The proposal thereby fails to meet the criteria to be considered a Class C4 use (small HMO). The Council does not accept that the references to other approvals (referred to above) in the Borough can be directly compared to this proposal.

My assessment

16. Having considered all of plans and submissions it is evident that the layout does not provide 6 separate fully self-contained flats. The Council's own guidance refers to a 'self-contained' unit meaning: *'a building, or part of a building, which has been constructed or adapted for use as separate living accommodation.'* A 'self-contained' unit can mean both a living space that is separate from other accommodation, and also living accommodation that is connected to, and sharing an access with, adjoining accommodation. Accommodation consisting of a living room and a kitchen, with a bedroom and a bathroom situated across a common hallway, is unlikely to be considered a self-contained unit.

17. When considering whether any living accommodation is a 'self-contained' unit with its own Council Tax (CT) band, a number of points are taken into account: These are that the physical characteristics and layout must be capable of use as separate living accommodation; that the physical identity of the accommodation will normally not be spread over different parts of a building; that a 'self-contained' unit does not need to have its own access to be regarded as self-contained and that such a unit would normally have its own areas capable of use for living and sleeping, for food preparation, for washing and have a WC.

18. In this case the bedrooms clearly double up as a 'living space' or 'living room' and there is clearly no kitchen or cooking facilities within the rooms. The 'Elfin Units' are located in other parts of the building as opposed to being in each room and these are all separate from any of the other rooms and accessible off common areas. It has been confirmed on behalf of the appellant (both in the appeal submissions and the legal opinion) that these units do not have any primary cooking facilities, that is ovens or hobs. The latter, together with laundry facilities, are located in the separate shared kitchen on the ground floor.

19. On the basis of the submissions; the 'Elfin Unit' specifications and from my inspection of the plans and photographs, I do not consider that the accommodation as proposed can, as a matter of fact and degree, be described as being 'self-contained'.

20. To a certain extent I can understand the Council's stance relating to the fact that, in terms of character of usage, the units could be perceived as being used as separate units as opposed to being a Class C4 HMO. Indeed, if the 'Elfin unit' spaces provided all of the normal or primary kitchen facilities such as oven and hobs, then the character of usage of the units would be significantly different. Despite the fact that the cooking facilities would not be contained within the main bedroom/living areas, each unit as let would be capable of all providing all of the facilities necessary for day to day living.

21. Clearly, one of the factors relating to whether or not a unit is 'self-contained', is that the physical identity of the accommodation will normally (my underlining) not be spread over different parts of a building. However, that is not to say that in certain cases and as a matter of fact and degree, a 'self-contained' unit could comprise of rooms within different parts of a building. If the different parts of that unit provided all of the necessary facilities of a separate flat, without reliance on any shared space or facilities, then the character of usage would be akin to any other 'self-contained' flat. Thus, separate 'Elfin' kitchens with full cooking facilities and no shared facilities could not be described as a single dwellinghouse in Class C4 or as a larger HMO.

22. However, in this case, as referred to above and confirmed on behalf of the appellant, the 'Elfin Units' do not provide full or primary cooking facilities and there will be a remaining shared kitchen within the property which will provide shared ovens, hobs and a washing machine. I do not agree with the LPA that the provision of a 'microwave' constitutes full cooking facilities. It simply provides the occupants with the ability to heat pre-cooked meals or drinks and is the sort of equipment which might normally be provided within any bedsit along with a kettle and perhaps a fridge.

23. In conclusion, therefore, I consider that a Lawful Development Certificate should be issued and the appeal succeeds.

Other Matters

24. I have noted that due to the proposed layout, future minor operations would be possible whereby some of the units could be altered to provide that the 'Elfin' kitchens could be accessed directly from the bedroom/living rooms. Although these minor works would not constitute operational development, they would alter the character of usage to the extent that a material change of use of the premises occurred. Thus the LPA would not be precluded from taking enforcement action. Similarly, if the basic 'Elfin Units' were upgraded to provide full cooking facilities I consider that this would also constitute a material change of use.

25. In reaching my conclusions I have taken into account all of the submissions made by the parties. These include the initial submissions; the planning history of the property; the delegated reports relating to the two LDC applications; the detailed appeal statements and all subsequent photographic and documentary evidence. However none of these alter my view that the use as proposed would be lawful and that a LDC should be issued. There are no other factors of such significance so as to change my decision.

Formal Decision

26. The appeal is allowed and a Lawful Development Certificate is attached below.

Anthony J Wharton

Inspector



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 12 September 2019 the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken in respect of the development because, on that date, it constituted permitted development under the Town and Country Planning (General Permitted Development)(England) Order 2015.

Signed

Anthony J Wharton
Inspector

Date: 10 August 2020
Appeal Reference: APP/T5150/X/20/3247293

First Schedule

Change of use from single dwelling (Use Class C3) into a 6 person HMO (Use Class C4)

Second Schedule

2 Dawpool Road, London NW2 7LB

Notes:

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended) and relates only to the above property.

It certifies that the development described in the First Schedule, at the property specified in the Second Schedule, was lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the development described in the First Schedule; to the property specified in the Second Schedule and to the plan submitted with the LDC application reference 19/3251 (Plan MSK layout: 1/GA-001 and 2/GA-002 dated 11.09.2019).

Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.