



Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Appeal Ref: APP/W5780/X/20/3249609

38 Castle Drive, Ilford IG4 5AE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 H Sanghera against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 4344/19, dated 11 November 2019, was refused by notice dated 6 January 2020.
 - The application was made under section 192(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is the change of use from dwelling (C3) to small HMO for up to six people (C4)¹.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
3. For the avoidance of doubt, the planning merits of the proposed use, such as demand, are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.

Main Issue

4. The application was seeking to establish that the proposed use of the building as a 'small house in multiple occupation' (HMO) would be lawful, if it had been instituted on the date of the application. If so, whether there has been a material change, before the use was instituted, in any of the matters relevant to determining such lawfulness. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

¹ This refers to the Schedule to The Town and Country Planning (Use Classes) Order 1987, as amended (the Use Classes Order).

Reasons

5. The appeal relates to an extended, two-storey with loft conversion, terraced house, which is located within a residential area. Article 3 and Schedule 2, Part 3, Class L.(b) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) grants deemed planning permission for development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation).
6. For the purposes of Class C4 of the Use Classes Order, a "house in multiple occupation" has the same meaning as in Section 254 of the Housing Act 2004. Crucially, an HMO would only exist where two or more of the households who occupy the living accommodation share one or more 'basic amenities' or the living accommodation is lacking in one or more basic amenities. The latter is defined in subsection 254(8) as a toilet, personal washing or cooking facilities.
7. The appellant explains that there would be no change to the interior structure and the HMO was ready to be occupied at the date of the application. The application plans show the property would comprise a shared reception room, a shared kitchen/dining/conservatory area and a shared bathroom, along with a bedroom, on the ground floor. There would be four bedrooms, a shared common room, two shared bathrooms and a WC on the first floor. A further bedroom and shower room would occupy the loft.
8. On the basis of the plans submitted, there is no dispute about whether or not the proposed use would meet the relevant requirements of the GPDO. However, I must go on to consider Section 192(4) of the 1990 Act - *the lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness*. The Council's refusal to issue the LDC was because it introduced a Borough-wide 'Article 4 Direction'² that became active on the 6 December 2019. This has the effect of removing the permitted development rights conferred by Article 3 and Schedule 2, Part 3, Class L.(b). Therefore, express planning permission would be required for the proposed change of use.
9. The Article 4 Direction constitutes a material change which has directly affected the status of the land in question. This material change occurred before the use was instituted. In consequence, the proposed use would not be lawful within the meaning of Section 191(2) of the 1990 Act.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the change of use from dwelling (C3) to small HMO for up to six people (C4) was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Debbie Moore Inspector

² Article 4(1) of the GPDO.