



Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2021

Appeal Ref: APP/Y5420/X/20/3253017

4 Malvern Road, Tottenham, London N17 9HH

- 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 Mrs Andrea Navarro against the decision of the Council of the London Borough of Haringey.
 - The application, Ref HGY/2019/0164, dated 6 December 2018, was refused by notice dated 1 February 2019.
 - The application was made under section 191(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 use as a Class C4 House in Multiple occupation (HMO).
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Decision

1. The appeal is dismissed.

The Site

2. The appeal property comprises a mid-terrace, two storey dwelling that has been extended at ground level with a single storey, full width rear addition and a rear dormer within the loft.

Preliminary Matters

3. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.
4. The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. “Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit.” In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.
5. Government advice in the Planning Practice Guidance is that an LDC application needs to describe precisely what is being applied for. In cases relating to an existing use the Secretary of State has the power under section 191(4) of the Town and Country Planning Act 1990 (the Act) to modify the description of the development.

6. The Council modified the description to "*Certificate of lawfulness for House in Multiple Occupation (HMO) existing use*" but this is not what the appellant set out in her application form. She stated the description of the existing use was "*That C4 HMO use began prior to the 2013 decision*".

The grounds for her application were

"The evidence shows that C4 use began before the Article 4 Direction of 2013 came into force (though the exact date is unknown and the end of 2010 is stated in this form in reliance upon Mr Grant's recollection) and was therefore lawfully implemented, the applicant providing explanation as to the matters raised by the LPA in its letter of 17 July and 29 August email."

In addition, the stated reason as to why an LDC should be granted was

"The evidence shows that C4 use began before the Article 4 Direction of 2013 came into force and was therefore lawfully implemented, the applicant providing explanation as to the matters raised by the LPA in its letter of 17 July and 29 August email. A certificate can therefore be given that such use began lawfully".

7. From all of this I find that, contrary to the Council's view, the appellant is actually seeking to establish that a small HMO use, falling within Use Class C4¹, began before the Council's Article 4 Direction came into force in November 2013. Furthermore, that this use has continued to the date of the application. As such, the development is succinctly described in the last bullet point above and I will proceed on that basis as there would be no injustice caused to either party.

Main Issue

8. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well-founded. That turns on two requirements:
- (i) Whether the appellant can show, on the balance of probabilities, that the change of use to a small HMO occurred before the making of the Article 4 Direction in November 2013, which removed the permitted development right;

This type of change of use was permitted by the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development)(Amendment) No 2 Order 2010 ('the Amendment Order'); and
 - (ii) Whether the appellant can show that the lawful use sought continued, until the date of the application, so as to be immune from enforcement action.

¹ Town and Country Planning (Use Classes) Order 1987 Use Class C4: Use of a dwelling house by not more than six residents

Reasons*The evidence*

9. The appellant has submitted the following documentary evidence:

- A statutory declaration dated 9 November 2018 made by the appellant;
- A witness statement dated 1 November 2018 made by the property manager of an adjacent house;
- A statutory declaration dated 15 May 2020 made by the appellant and her partner;
- A witness statement dated 10 May 2020 made by a former tenant;
- A copy of a builder's "Cost of works" document detailing the stripping out and updating of the property, the erection of a single storey extension and carrying out a loft conversion and fitting new internal fire doors for a HMO, signed by both the builder and the appellant 30 June 2015;
- Tenancy agreements for the occupation of various rooms within the property, as follows:

<i>Tenancy agreement period</i>	<i>Tenant reference</i>
12 Oct 2014 - 30 Apr 2015, extended until 20 Jun 2017	Tenant 1
14 Oct 2014 - 13 Dec 2014	Tenant 2
25 Oct 2014 - 15 Dec 2015	One room occupied by two people, Tenants 3 and 4
14 Dec 2014 - 13 Jun 2015	Tenant 5
17 Dec 2014 - 16 Jun 2015	One room occupied by two people, Tenants 6 and 7

- Deposit Protection Service statements showing dates when rent deposits paid by various tenants, as follows:

<i>Date deposit paid</i>	<i>Tenant reference</i>
30 October 2014	Tenant 1
3 December 2014	Tenant 5
17 December 2014	Tenant 7
21 December 2015	Tenant 8
2 January 2016	Tenant 9
17 January 2016	Tenant 10

- Bank statements for A and A Navarro Properties Limited showing rent paid by various tenants, as follows:

<i>Bank statement dates</i>	<i>Tenant reference paying rent</i>
11 Nov 2014 - 16 Dec 2014	Tenant 7
17 Dec 2014 - 10 Jan 2015	Tenants 1 and 7
11 Jan 2015 - 10 Feb 2015	Tenants 1, 5 and 7
11 Feb 2015 - 16 Mar 2015	Tenants 1 and 5
17 Mar 2015 - 10 Apr 2015	Tenants 5 and 7
11 Apr 2015 – 10 May 2015	Tenants 1 and 5

- Incomplete copy of HMO licence application;
- London Borough of Haringey HMO licence dated 13 March 2018; and
- Plans dated February, March and April 2015 showing the layout of the property at the time it was bought by the appellant and as proposed, now implemented, with the single storey extension and loft conversion.

Assessment

10. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant and the test of the evidence is the balance of probabilities. The appellant's own evidence does not have to be corroborated by "independent" evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate. This is on the basis that it is sufficiently precise and unambiguous.
11. The appellant's first requirement is to demonstrate that a material change of use to a small HMO occurred before November 2013. Tenant 1 confirms that he began his tenancy on 1 August 2013. This continued until September 2014, with the previous owner of the property. He states there were two other tenants living in the property at the time and all the doors had locks and numbers and the tenants shared the kitchen and the bathroom.
12. The property manager of an adjacent house knew the previous owner from 2002 and was aware that she was using the house as a small HMO from approximately 2010. He introduced the current owners to the previous owner in 2013, after she had decided to sell the property. As she was abroad for much of the time, he claims he helped her with viewings and management issues. As such, he was aware that there were five unrelated tenants in her small HMO.
13. The appellant submits plans to show the previous layout of the property before it was extended. The rooms are not labelled but they appear to show a lounge, kitchen and bathroom on the ground floor and three rooms at first floor level.

14. The only evidence that the Council has that may dispute the appellant's version of events is electoral roll information, which is referred to in the Council's officer report but has not been submitted in response to the appeal. There is no Council Tax evidence and no notes or photographs of any previous site visits.
15. I find it is more than likely that the previous owner changed the use of the property to a small HMO before November 2013, notwithstanding the inconsistency between Tenant 1 stating there were two other tenants and the adjacent property manager stating there were five in total. This is on the basis of Tenant 1's evidence, who lived in the property, which is largely corroborated by that of the adjacent property manager.
16. The plans of the property from that time do not show how the building was used but they do not conflict with Tenant 1's evidence. Whilst there is no precise date as to when the use began, on the balance of probabilities, it could have begun in 2010 after the Amendment Order came into force but it appears to have been in use as a small HMO since at least 1 August 2013. This date is important as it is before the Article 4 Direction came into force.
17. The second requirement is to show that the lawful use sought continued until the date of the application. This is because the question being asked when seeking an LDC for an existing use is whether that existing use is lawful for planning purposes on the date of the application.²
18. The appellant's evidence does not show that the small HMO use continued to the date of the application. This is for a number of reasons, as follows. After the appellant purchased the property in October 2014 she found new tenants for the dwelling, namely Tenants 2, 3 and 4 and retained Tenant 1.
19. All these tenants signed tenancy agreements in October 2014 but it appears only Tenant 1 paid a deposit into the Deposit Protection Service. The layout of the property at the time was that of a front door opening into a lobby and doors from the lobby opening into an open plan lounge. Three rooms at first floor level are accessed directly from the stairs leading up from the lounge.
20. It is known that Tenants 3 and 4 shared a room and that "All 4 tenants decided to stay"³ in the property during the building works that took place between July 2015 and September 2015. This is stated by the appellant and corroborated in part by Tenant 1, who also adds that he paid a reduced rent during the building works. However, it is unclear which four tenants occupied the property at this point. Tenants 2, 3 and 4 may have become periodic tenants or they may have vacated the property by this time. On the basis that there is no evidence that they paid either a deposit or rent, it seems likely that they vacated the property in December 2014 but none of this is explained by the appellant in a clear timeline of events.
21. What is clear is that Tenants 5, 6 and 7 began their tenancy agreements in December 2014, when it appears the property only had three bedrooms. The evidence shows that they paid deposits into the Deposit Protection Service and the selected bank statements also show that they paid rent for about six

² The Planning Practice Guidance states "where an application has been made under section 191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application". ID: 17C-002-20140306

³ Appellant's statutory declaration

- months. The appellant though does not state which rooms they occupied or who they succeeded.
22. In her statutory declaration paragraph 8, the appellant states that her builders increased the number of rooms from three to six so it would appear that the extra rooms were not created until July 2015 at the earliest. This is corroborated in part by the builder's "Cost of works" document, which itemises "Remove internal front entrance lobby in 4 Malvern" and "Form new non load bearing stud partitions to ground floor".
23. There are inconsistencies though between what the appellant states and some of the information shown in her documents in terms of how many bedrooms are now provided in the property. The appellant and Tenant 1 state there are six but the "Cost of works" document does not specify the creation of rooms, only the formation of stud partitions, and the plans are unclear. The plans show Bedrooms 1 and 2, labelled as such by the architect, are situated on the ground floor within the former lounge area. There is also a bathroom and kitchen labelled on the plans at the rear of the property. At first floor level none of the rooms are labelled but a bathroom has been added within an extension and annotated "Bath". The numbers 3, 4 and 5 have been handwritten in these first floor room areas. Within the loft area, there are two rooms labelled "Bedroom" by the architect, one within the main roof and one within the extended roof over the outrigger projection. In addition, the number 6 has been handwritten in the bedroom within the main roof.
24. Based on the plans of the property it would appear that there are now seven bedrooms, two on the ground floor, three on the 1st floor and two within the loft. The appellant's HMO licence application and the licence that has been issued by the Council support my view that the property is now used to house seven or more persons. This is because the incomplete copy of the application shows at the time it was prepared in May 2017 that the property was used as follows:

Room 1, ground floor front room	Tenant 9
Room 2, ground floor middle room	Tenant 11
Room 3, first floor back room	Tenant 8
Room 4, first floor middle room	Tenant 1
Room 5, first floor front room	Tenants 12 & 13
Room 6, 2 nd floor attic	Tenants 14 & 15

25. The appellant lists six rooms but the building is occupied by a total of eight tenants. The licence was issued for "Occupation by not more than 7 persons occupying 6 households". The wording in the licence is based on the Housing Act 2004 but the definition of a C4 HMO use is set out in planning legislation as

occupation by no more than six residents. It is this definition that is relevant when considering the lawfulness of the use in an LDC application.

26. Taking all these matters into account, I consider that the appellant has demonstrated, on the balance of probabilities, that the change of use to a small HMO falling within use Class C4 did occur before November 2013. However, at some point between 1 August 2013 and the date of the application, the number of residents increased to eight. This level of occupation is outwith the definition of a Class C4 HMO use, which is limited to use by no more than six residents. The appellant has therefore failed to demonstrate that on the date of the application the property was in use as a Class C4 HMO with no more than six residents.

Conclusion

27. 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 use as a Class C4 HMO 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.

D Fleming

INSPECTOR