
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 June 2020

Appeal Ref: APP/U5930/X/20/3260252

14 Harvey Road, Leytonstone, London E11 3DB

- 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 Ms Kavitha Knight of Samuel Raj against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 201989, dated 5 July 2020, was refused by notice dated 2 September 2020.
 - 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 described as "Class C4: House in Multiple Occupation, shared house occupied by 3-6 unrelated individuals sharing basic amenities".
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by the appellant. This application is the subject of a separate decision.

Procedural 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.¹
4. The appellant states that the date of the application was 6 July 2020 but according to the copy of the application form submitted with the appeal, it was 5 July 2020. I shall therefore proceed on the basis of this date.
5. The appellant omitted to provide a copy of an aerial photograph with the appeal that had been considered by the Council. Although a copy was requested, this was not forthcoming. I have addressed this in my assessment.

¹ 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.

Main Issue

6. 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 whether the appellant can show, on the balance of probabilities, that
 - (i) There was a material change of use of the land to use as a house in multiple occupation (HMO); and
 - (ii) That the use has continued without material interruption thereafter so as to be immune from enforcement action.

Reasons

7. The appeal concerns a two storey terraced house.
8. A certificate of lawful use or development is not a planning permission. Its purpose is to enable owners to ascertain whether specific uses, operations or other activities are, or would be, lawful. Lawfulness is equated with immunity from enforcement action (section 191(2) of the Act). The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority.
9. The burden of proof regarding decisive matters of fact rests on the appellant. She has asserted that the HMO use is lawful because the use began in July 2007, before the introduction of the C4 HMO use class in April 2010.² In addition, she asserts that the HMO use began before the making of the Council's Article 4 Direction on 16 September 2014. The effect of the Direction is that it removes the permitted development right set out in Part 3, Class L of the Town and Country Planning (General Permitted Development)(England) Order 2015 to change from a Class C3 Dwellinghouses use to a Class C4 use without the need to obtain an express grant of planning permission.
10. As such, the relevant date for considering the lawfulness of the HMO use is July 2007 and the appellant must therefore adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of her assertions.
11. Subsection 191(2)(b) of the Act is met here as there are no enforcement notices in force in respect of the use. With regard to section 191(2)(a) of the Act, the appellant's evidence is as follows:
 - NatWest bank statements
 - Letter from property manager, Theydons, dated 21 April 2020
 - Email from The Deposit Protection Service, dated 16 November 2015
 - Certificates of tenancy deposit protection with The Deposit Protection Service

² Class C4 was inserted into the Town and Country Planning (Use Classes) Order 1987 by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010. Class C4 is stated as being the "Use of a dwellinghouse by not more than six residents as a 'house in multiple occupation'" and in the Interpretation it is stated that the HMO use has the same meaning as in section 254 of the Housing Act 2004. A building is used as an HMO under s254(1) if it meets the "standard test" under s254(2). This test requires that two or more households share one or more basic amenities or that the living accommodation lacks one or more basic facilities.

- Site location plans dated June 2005 and July 2020, floor plans and current photographs of the property.

Assessment

12. The floor plans and recent photographs show that the building is currently laid out and appears to be in use as an HMO. The site plans and any aerial photographs are of no assistance in determining the history of the use of the property, which is concerned with the internal use of a building.
13. The appellant relies on the information in the bank statements to support the early years of the HMO use. The earliest statement has a transaction made 18 July 2007 and the last ends with a transaction made on 8 June 2015.
14. They are not a complete set of bank statements. Instead the appellant has supplied statements from each year, all showing payments being made, highlighted in pink, by various individuals. From my inspection of these documents I find some of the references include "Rent 14 Harvey", (see 14 July 2008 statement) in the description or "Rent - Harvey Road", (see 24 June 2010 statement), but the majority only list the name of a person, sometimes with the word "Rent" afterwards, (see 5 July 2011 statement). There are no documents, such as tenancy agreements, to verify that the payments recorded as made by just a person were payments of rent for the appeal site.
15. The appellant submits that she had no control over the reference term used by the payees. However, I find it is not unusual for small businesses to stipulate that payments should be made using a particular name/reference number so that the recipient has an audit trail of the payments.
16. It appears that two individuals (minimum necessary for an HMO use) made regular³ rent payments between August 2007 and February 2009 for the appeal site. Whilst there are gaps in the payments due to the incomplete bundle of bank statements, I find this would support the appellant's claim that an HMO use began in 2007 and continued until February 2009.
17. However, notwithstanding the Theydon's evidence of an HMO use from 31 October 2015, which has continued to at least April 2020, the date of the Theydon's letter, I find that the appellant's case is not made out. This is because it has not been substantiated that any HMO use which began in 2007 continued until 2010, when the new C4 Class was introduced. In addition, it has not been substantiated that any HMO use continued until 15 September 2014, the day before the Article 4 Direction came into force.
18. The appellant has submitted a copy of an appeal decision⁴ to support her case, in which an appellant sought an LDC for use as an HMO. I find that case can be distinguished from the current appeal in that it was demonstrated the HMO use in that case was in operation at the time the new Class C4 was introduced. When the subsequent Article 4 Direction came into effect in 2011, it had no consequence for the appeal site, which was already established as an HMO. No two cases are alike and a previous Inspector's decision does not direct my own conclusions on the evidence that is before me in this case.

³ Trollip and Corne "Rent 14 Harvey": August, December 2007, January, July 2008, January, February 2009.

⁴ APP/Z1775/X/15/315179, reference number from decision letter

19. To summarise, the appellant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. The onus of proof however is firmly on her to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate. Overall, I find the appellant's evidence, on the balance of probabilities, does not meet this requirement, for the reasons given. As with all LDC applications, it is open for fresh applications to be made if, for example, other evidence comes to light.

Conclusion

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "Class C4: House in Multiple Occupation, shared house occupied by 3-6 unrelated individuals sharing basic amenities" 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