



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21st July 2021

Appeal Ref: APP/L5240/X/21/3268559

Tara, Chisholm Road, Croydon, CR0 6UP

- 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 Miss Esha Laxman against the decision of the Council of the London Borough of Croydon.
 - The application Ref 20/03506/LE, dated 6 August 2020, was refused by notice dated 24 November 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 as House in Multiple Occupation ('HMO') for up to 6 people.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Main Issue

2. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well-founded. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of any enforcement notice then in force.¹ No evidence was submitted regarding an enforcement notice in relation to this property at the time of the application during the appeal.
3. In order to succeed in this appeal the appellant must show that the change of use from a dwellinghouse (Use Class C3) to an HMO for not more than 6 residents (Use Class C4) was lawful. As the Council brought in a direction under Article 4(1) of the Town and Country Planning (General Permitted Development)(England) Order 2015 ('the GPDO') removing the permitted development rights for change of use from a single dwellinghouse (C3 use) to a HMO (C4 use) on 28 January 2020, the appellant must show that the property had changed to a C4 use prior to that date.
4. Planning Practice Guidance states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to

¹ Section 191(2) of the 1990 Act.

refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Reasons

5. The appellant's case is that the property was used as a small HMO (Use Class C4) from 15 August 2019 but had been rented accommodation prior to that. The evidence submitted to support the statement of case includes four tenancy agreements dating between 15 August 2019 and 25 January 2020, each for a different room in the house. There is no evidence of rental payments or corroborative statements from the tenants, or indeed from the owner, other than one tenant who has provided a sworn affidavit that he moved in on 25 January 2020 and that two other tenants were living there also at that point.
6. In terms of other supporting evidence, the appellant has provided three items of correspondence for the property which are addressed to two of the people named on the tenancy agreements supplied (and the names match those given in the affidavit). There is also correspondence with the Council regarding the need for an HMO licence for the property dating from 13 September 2019, 25 October 2019 and 20 November 2019.
7. The Council's case is that the property could not have been used as a 6 person HMO until after the renovation works were completed. They argue this must have been after 20 Feb 2020 when the front room was visible during a visit by an Environmental Services Officer who could see it was being used to store building materials (and therefore not being used as a bedroom). In addition, the Council state that there was not an HMO licence in place until 26 November 2020 and any such use prior to the Article 4 Direction coming into effect on 28 January 2020 was therefore unlicensed.
8. The appellant does not have to prove that the property had been occupied by 6 people prior to 28 January 2020 in order to show the it had been used as an HMO which falls within Class C4. The use class is: 'Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"' which is further defined as one or more units of living accommodation (not consisting of a self-contained flat or flats) occupied by persons who do not form a single household who share one or more basic amenities². In this case the tenants shared the basic amenity of cooking facilities. The appellant must therefore show that at least two people were occupying the property in this way (at the same time) prior to the Article 4 direction coming into effect.
9. A neighbour provided written comments during the appeal that the property was never used as an HMO prior to 2018. This does not cast doubt on the appellant's case as they are not in fact relying on anything that happened prior to 2018. The licensing regime for HMOs is separate to the planning use and the lack of licence is not therefore directly relevant to the planning position. In fact, the ongoing correspondence about the need for an HMO licence during Autumn 2019, along with the various correspondence to named tenants at the property, does corroborate the appellant's case that the property was being occupied by several tenants during that time. In addition, the sworn evidence in the affidavit corroborates the appellant's case and provides direct evidence

² Under section 254 of the Housing Act 2004.

regarding the use of the property before the Article 4 Direction came into effect, albeit by only a few days.

10. In light on the evidence set out above, and in the absence of any evidence to contradict the appellant's version of events which is precise and unambiguous, it is likely on balance that prior to the 28 January 2020 the property was used as an HMO which falls within use class C4.
11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use as a House in Multiple Occupation for up to 6 people was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Zoë Franks

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 6 August 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use as a House in Multiple Occupation began before 28 January 2020; and

The use does not contravene the requirements of any enforcement notice in force.

Signed

Zoë Frank

Inspector

Date 21st July 2021

Reference: APP/L5240/X/21/3268559

First Schedule

Use as a House in Multiple Occupation for 6 people

Second Schedule

Land at Tara, Chisholm Road, Croydon, CR0 6UP

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land 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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated:

by Zoë Franks Solicitor

Land at: Tara, Chisholm Road, Croydon, CR0 6UP

Reference: APP/L5240/X/21/3268559

Scale: Not to scale

