



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2021

Appeal Ref: APP/U5930/X/21/3268888
680 Forest Road, Walthamstow E17 3ED

- 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 Reid against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 203406, dated 3 November 2020, was refused by notice dated 24 December 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 use of ground and first floor of the property as a house in multiple occupation (HMO) for 5 persons and use of the loft area as studio flat.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Planning Inspectorate initially intended for this appeal to be determined following a site visit. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient evidence to understand the nature of the site and surrounding area given the points in dispute. On that basis, as the appointed Inspector, I consider I can proceed to a decision on the evidence before me.

Main Issue

3. No issues of planning merit are relevant to any LDC appeal. The planning merits of what has been applied for cannot be taken into account.
4. The main issue for the appeal is solely whether the Council's decision to refuse the application for an LDC was well-founded. Particular regard is to be had to whether, at the date the application was made, no enforcement action could have been taken in respect of the use of the ground and first floor of the appeal property as an HMO for 5 persons and use of the loft area as studio flat because the time for enforcement action had expired.

Reasons

5. Section 191(2)(a) of the 1990 Act states that uses are lawful at any time if no enforcement action may be taken in respect of them because: the time for enforcement action has expired; the use did not involve development; or the use did not require planning permission.
6. In cases where a material change of use has occurred, it is necessary to first ascertain the correct planning unit and the present and previous primary uses of that unit. The evidence suggests that prior to the material change of use subject of the application taking place, the appeal property was a single planning unit in use as a single dwellinghouse.
7. The evidence indicates that the flat in the roof space is self-contained with all the necessary kitchen facilities and its own bathroom to support its independent use. Whilst occupants will need to enter the HMO and utilise the internal staircase, the flat has little functional link to it beyond that. In contrast, residents of the HMO are dependent on shared facilities and spaces. Thus, it seems to me that the material change of use has resulted in the creation of two separate planning units within the appeal property, one in use as a self-contained flat and one in use as an HMO.
8. The time period for a breach of planning control involving a material change of use to a single dwellinghouse is 4 years under section 171B(2), whilst any other change of use is 10 years under section 171B(3). The relevant time period for the material change of use of the second floor to a self-contained flat is 4 years, since a flat is a single dwellinghouse for the purposes of the 1990 Act.
9. On the other hand, section 171B(2) does not apply in cases where there has been a change of use to an HMO since the units within an HMO are not self-contained. Thus, the 10 year rule under section 171B(3) applies in respect of the change to an HMO.
10. Thus, it is necessary to establish whether the material change of use of the loft space to a studio flat occurred on or before 3 November 2016 and the use continued uninterrupted for four years or more thereafter. In addition, it is necessary to establish whether the material change of use of the ground and first floors of the property to a HMO for 5 persons occurred on or before 3 November 2010 and the use continued uninterrupted for ten years or more thereafter.
11. The submitted plan shows the property comprises an HMO with five rooms, a bathroom, a dining area and a kitchen. The self-contained flat is located on the second floor. The affidavit of the appellant indicates that they have personal knowledge of the property from November 2004 onwards, stating that the use of the property through that period has been an HMO and a flat.

Flat

12. The appellant's statement indicates that a person (Mr A) has occupied the studio flat continuously since 19 November 2012. However, a signed statement from Mr A dated 14 October 2020 states that they continuously resided in the studio flat from 20 May 2012. Moreover, this contradicts the affidavit of the appellant which states the top floor flat was completed in November 2004 and rented from that time onwards, as does a letter from HJ

Accountancy Services. A signed statement from person who says they resided at the property from 5 November 2004 to 28 February 2012 indicates there was a self-contained flat on the top floor throughout their occupancy.

13. The appellant has provided letters from Barclays Bank Plc dated 20 March 2013 and from HM Revenue and Customs dated 22 April 2020 to Mr A at 680 Forest Road. However, neither letter indicates whether that person occupied the studio flat or a room within the HMO. Moreover, the letter from HMRC does not pre-date the relevant date of 3 November 2016.
14. A document shown to be an Assured Shorthold Tenancy is also provided. It is said to be between Mr A and the appellant. It is signed only by Mr A and dated 20 May 2012. However, it also has a date of expiry which is dated 19 November 2012. This is the date in which the appellant's statement says the tenant began residing in the flat. Moreover, it only states that Mr A requires possession of 680 Forest Road. There is no indication that the agreement facilitates their occupation of the studio flat on the second floor. An image of a bank account shows a payment into it from a Mr A but it is only dated 21 September. There is no year on the transaction nor is there any reference attached to it which indicates that it is for rental payments.
15. In addition, a tenancy agreement dated 1 October 2012 is provided for two persons for 680 Forest Road. However, the agreement states that the rental is for the possession of the dwelling flat at 680 Forest Road for 1 October 2012 to 30 March 2013. If this tenancy agreement related to the studio flat then the occupancy would overlap with that of Mr A.
16. The appellant has also provided copies of several of their bank statements. They show a payment from Mr A on 25 October 2016, however, the reference for the payment is "tottenham court ro". Payments on 27 October 2017, 29 October 2018, 28 October 2019 and 21 September 2020 are also shown for the same amount from Mr A with the same reference. These payments gave no indication that Mr A made those payments for the rental of the studio flat, particularly given the reference for the payment appears, on the face of it to relate to something different. Moreover, the statements provided are only for 1 month from each year and do not provide any indication of such payments having been made on a continuous basis.

Room 1

17. It is said that Room 1 in the HMO was occupied by the same person from 2014-2019. That person had letters to the property from Companies House dated 12 October 2017, HMRC dated 4 October 2014, 22 September 2014 and 31 July 2017 as well as Sky on 20 November 2017. A bank statement of that person has also been provided showing 680 Forest Road as the address. The statement is dated 3 July 2017 to 1 August 2017.
18. A tenancy agreement for the occupant is provided showing a 12 month tenancy from 12 February 2014. It shows occupancy of Room 1 in 680 Forest Road with shared use of kitchen, bathroom and dining room. However, there is nothing within the agreement that indicates that there were additional rooms within the property at that time such that the property was in use as an HMO.

Room 2

19. Beyond the general declarations of the appellant, two of the occupants and AJ Accountancy Services that the property has been in use as an HMO and self-contained flat since 2004, there is little specific evidence from the appellant of any occupancy of Room 2 at any point.

Room 3

20. It is said that this room has been occupied by the same person since 2014. An image of bank account transactions is provided showing a payment for £500 made in the name of the person said to have lived in room 3 since 2014. The payment has the reference of "rent". However, it is undated. Likewise, there is a payment from the same person for £400 dated 13 May but with no year. Bank statements do show payments made by the same person to the appellant for rent on 5 October 2015, 4 November 2016, 6 November 2019 and 7 October 2020.
21. A tenancy agreement for the same person is provided. It is dated for 12 months from 21 March 2017 and identifies occupancy of Room 3. It states only that the bathroom and kitchen of the property are shared facilities.

Room 4

22. Room 4 is said to have been occupied between 2012 and 2019 by the same person. A bank statement has been provided which shows a payment from the person. The payment is for £360 and is dated 1 October 2015. There are also payments dated 2 November 2016, 15 October 2018 and 1 November 2018.
23. In addition, the appellant has provided bank statements for the period Sep-Oct for each year from 2015 to 2020. These statements show several payments received from persons said to have resided in the HMO. However, these payments do not show in the references that they were made for rental payments for the HMO at 680 Forest Road.
24. A tenancy agreement dated 1 October 2012 is provided in the name of the same person. It states that the rental is for the possession of the dwelling flat at 680 Forest Road for 1 October 2012 to 30 March 2013. However, it is not clear if this relates to the occupancy of the self-contained flat or a room within the HMO since the occupancy would overlap with that of Mr A's tenancy agreement from 2012 of the studio flat.

Room 5

25. It is stated that Room 5 was occupied from 2005-2012 after which a different person has occupied it since. An affidavit is provided in which the person said they had occupied it from 5 November 2004 to 28 February 2012. However, the appellant says they occupied it from 2005 to 2012. Either way, whilst they state that the property was laid out as an HMO and a self-contained flat, they did not state which of the two they resided within or whether their occupation was continuous for that period. A tenancy agreement for that person is provided which is dated 4 November 2005. However, the agreement states it is for the letting of a furnished dwelling room. There is no indication the letting is for a room as part of an HMO or indeed that the property was in use as an HMO and self-contained flat at that time.

26. A driving licence for the person to have said to have resided in Room 5 from 2012 onwards is provided showing 680 Forest Road as their address. However, the licence has a start date of 2 November 2017.
27. In addition, an image of a bank transfer for £500 from the same person is provided. The transaction is dated 25 September but no year is given. It is also the case that an image of a transaction for £510 in the same surname is dated 14 May but with no year. Nor is there any reference which indicates the transactions were for rental payments.
28. A bank statement is provided showing a payment from the person dated 17 October 2018 but there is no indication it is for rental payments. There is also a transaction from the same person on 14 October 2019 and 25 September 2020 but again there is no indication those payments are for rental.
29. A tenancy agreement is shown for the 12 month rental of room 5 in the HMO for £500 per month for a person who's name also appears on a bank statement as having made a payment for that amount. However, the agreement is dated 10 September 2017. The same person's bank statement is provided showing 680 Forest Road as the address but it is dated 9 November 2019 to 9 December 2019.

General

30. An HMO licence under the Housing Act 2004 indicates the Council granted a licence of the use of the property as an HMO for not more than 6 persons. However, the licence is dated 11 January 2017 and is marked as 'draft'. This is accompanied by a covering letter of the same date. A licence dated 6 February 2018 for the use of the property as an HMO is provided. This is not marked as a draft.
31. A fire alarm system Certificate of Commissioning is provided dated 25 November 2005, however, there is nothing within the certificate which indicates the property was in use as an HMO and self-contained flat at that time.
32. Overall, the evidence in respect of the HMO use mostly post-dates the relevant date of 3 November 2010. Evidence which does pre-date the relevant date is unclear and ambiguous. Likewise, little evidence in respect of the occupation of the studio flat pre-dates 3 November 2016. That which does is not sufficiently clear regarding its occupation. Indeed, I find the evidence of the appellant as a whole is insufficiently precise and unambiguous.
33. I conclude therefore, that the evidence does not demonstrate, on the balance of probabilities, that the material change of use of the property to a self-contained flat took place on or before 3 November 2016 and continued for 4 years thereafter. Nor indeed has it been demonstrated that the material change of use to an HMO took place on or before 3 November 2010 and continued for 10 years thereafter.
34. As a result, at the time the LDC application was made, the time for enforcement action would not have expired.
35. Turning to the question of whether the development would have been lawful under section 191(2)(a) because it did not require planning permission. Section 55(3)(a) of the 1990 Act provides that the use as two or more separate

dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building as a whole and each part of it which is so used. In this case a single dwellinghouse has been subdivided into separate self-contained flat and an HMO. Thus, it amounts to development for which planning permission is required.

36. Article 3(1) of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for those classes of development deemed to be 'permitted development' in Schedule 2. Class L of Part 3 of Schedule 2 of the GPDO permits the change of use from a dwellinghouse within Use Class C3 to an HMO within Use Class C4 (an HMO occupied by between 3 and 6 persons).
37. However, the Council brought into force a direction under Article 4 of the GPDO to restrict any change of use from C3 to C4 under Class L of Part 3 from taking place was brought into force on 15 September 2014. In respect of the HMO use, only the tenancy agreement dated 12 February 2014 for the occupancy of Room 1 specifically pre-dates 15 September 2014. Overall, the evidence of the appellant is not sufficiently precise or unambiguous to demonstrate the HMO commenced prior to 15 September 2014. As such, there is no reason for me to conclude that the change of use would have been granted planning permission at the time it took place through Article 3(1) of the GPDO.
38. Consequently, I find that at the time the application was made, the use of ground and first floor of the property as a house in multiple occupation (HMO) for 5 persons and use of the loft area as studio flat would have been development for which planning permission was required and for which no such permission has been granted. As a result, the development would not have been lawful under Section 191(2)(a) of the 1990 Act at the date of the application.

Conclusion

39. 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 of the ground and first floor of the property as a house in multiple occupation (HMO) for 5 persons and use of the loft area as studio flat, 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.

J Whitfield

INSPECTOR