



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/U5930/X/20/3261446
35 Somerset Road, London, E17 8QN

- 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 Philp Mano against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 202173, dated 22 July 2020, was refused by notice dated 24 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 as a Small HMO – C4 Dwellinghouse.
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Decision

1. The appeal is dismissed.

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 has been 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 from use from a dwellinghouse (Use Class C3) to a house in multiple occupation for not more than 6 residents i.e. a Small HMO (Use Class C4) was lawful.
4. The Council brought in a direction under Article 4(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015('the GDPO') removing the permitted development rights for change of use from a single dwellinghouse (C3 use) to and HMO (C4 use) on 16 September 2014.
5. The 1990 Act provides time limits beyond which enforcement action cannot be taken for different types of breaches of planning control i.e. the period of time that a breach must subsist to become immune from enforcement action.

¹ Section 191(2) of the 1990 Act.

Section 171B (2) provides that " *where there has been a breach of planning control consisting in the change of use of any building to a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*" However, this section does not apply in this case as there has not in fact been a 'change of use...to a single dwellinghouse'. The Council considers that the property was previously used as a class C3 dwellinghouse, and this has not been disputed by the appellant. The parties agree that it was being used as a class C4 dwellinghouse at the date of the LDC application. There has not, therefore, been a change of use **to** a single dwellinghouse (because it was already being used as a single dwellinghouse).

6. Section 171B (3) therefore applies in this case, and provides that no enforcement action may be taken after the period of 10 years beginning with the date of the breach. This is notwithstanding the information provided by the appellant which he states was on the Council's website with says: '*Small HMOs will require evidence of continuous [sic] for four years prior to the date of the application*². This is simply incorrect.
7. The appellant must therefore show that the property had changed to a class C4 use either: a) prior to the date that the Article 4 Direction came into force (16 September 2014); or b) had been used as such an HMO (in C4 use) for a substantially uninterrupted period of at least 10 years prior to the date of the LDC application.

Reasons

8. The LDC application form states that the property has been rented since 24 October 2014 to no more than four occupants forming more than one household. The appellant's statement of case also states that the first tenancy began on 25 October 2014 (although renovation works took place between April and October 2014). It is the appellant's case that the property was not occupied until 25 October 2014 and he has not shown on balance that the change of use to a Small HMO (Use Class C4) occurred until the first tenants moved in. It is therefore not the appellant's case that it had been used as a small HMO before the Article 4 direction came into force, or for a period of more than 10 years, prior to the date of the LDC application.
9. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use as a Small HMO – C4 Dwellinghouse 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.

Zoë Frank's

INSPECTOR

² Document with the Council logo provided by Appellant entitled "Planning & HMOs" dated 11 February 2020.