



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 05 January 2022

Appeal Ref: APP/Q5300/X/21/3273944

First and Second Floors 200-202 Fore Street, London, N18 2JD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Kamal Chaudhry (Chaudhry Investments Ltd) against the decision of London Borough of Enfield.
 - The application ref 21/00414/CEU, dated 4 February 2021, was refused by notice dated 16 April 2021.
 - 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 an HMO (7 residents).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The LDC application described the use as C4 small HMO which was incorrect as the supporting evidence related to the use of the property as an HMO for 7 residents. The LPA determined the LDC based on this evidence and the reason on the decision notice described the use as an HMO (sui generis) and so had clearly been assessed on that basis. I will therefore determine the appeal on the basis of the use as an HMO for 7 residents (sui generis).
3. The site address given on the application form is 200 – 202 Fore Street, and on the appeal form as First and Second Floors 200 – 202 Fore Street. The description of the existing use on the application form relates to 'Use of Block C' and the decision notice similarly refers to the location as 'First and Second Floor (Block C)'. The areas of the building which are covered by the application and part of Block C are clear from the submitted plan.

Main Issue

4. The main issue is whether the Council's refusal to issue the 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.
5. Section 171B(2) of the 1990 Act provides that "*where there has been a breach of planning control consisting of the change of use of any building to a single*

¹ Section 191(2) of the 1990 Act.

dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach." However, Section 171B(3) applies in all other cases and provides that no enforcement action may be taken after a period of 10 years beginning with the date of the breach.

6. A large HMO for more than 6 residents is a sui generis use but is still a single dwellinghouse. In this case, no information has been provided by either party regarding the use of the building prior to 2011. I am therefore unclear as to whether the part of the building now known as Block C had previously been used as a single dwellinghouse or as something else. This is relevant because the 4 year time limit under section 171B(2) only applies where there has been a change of use **to** a single dwellinghouse.
7. The appellant is responsible for providing sufficient information to support his application. The burden of proof is on the balance of probability and the information must be sufficiently precise and unambiguous to justify the grant of the LDC. In this case the appellant has not provided evidence regarding the previous use of Block C and it is not proven which would be the appropriate time limit for enforcement under section 171B(2). It has therefore not been proven on balance that the appropriate limit is 4 years as initially argued by the appellant at the time of the application.
8. Therefore, in order to succeed in this appeal the appellant must show that the property has been used as an HMO for 7 residents for a substantially uninterrupted period of 10 years prior to the date of the application.
9. The evidence submitted by the appellant does not have sufficient clarity and precision to prove the use as an HMO for 7 residents for a substantially uninterrupted period of 10 years prior to 4 February 2021. The 2 statutory declarations provided are not sufficiently precise and unambiguous as they cover not only Block C ,but also Block A and Block B, and do not provide any details about the relevant tenants and the dates during which they lived in the property. In addition, the tenancy agreements provided do not cover the whole of the relevant time period or indeed the whole of the property as they only relate to four of the seven bedrooms. Very limited supporting evidence was included with the application and appeal. The documents that were provided did not cover the whole of the 10 year period necessary, and did not show that anyone had actually lived in each of the rooms. The Council Tax record show that it was registered with effect from 1 February 2012, which does not therefore cover the whole period of time or in itself prove that it was actually occupied as such, and the invoices for the various repairs and materials did not prove that there was any actual occupation or use of the property as a 7 bedroom HMO.
10. In addition, there seemed to be some discrepancies in the dates shown on several of the documents. The bank statement for Ahmed Abdulkadir Mohamed is dated 31 January 2011, but the body of the letter refers to revised terms and conditions being mailed in May 2018 and also to the GDPR which was only implemented into UK legislation by the Data Protection Act 2018 (i.e. 7 years later). The British Gas bill is dated 15 January 2011 but also gives the balance of the account on 20 November 2020 and asks if the bill payer has been affected by Covid-19. The address given on that letter is Block C, Rooms 1 – 4 and does not provide proof of a 7 bedroom HMO in any event. The discrepancies in these documents limits the weight which I can attach to them,

but even if I were to accept them as presented, they would not have altered my conclusion as they do not show a continuous use of the 7 rooms over a relevant 10 year period when considered with the other appeal documents.

Conclusion

11. 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 an HMO (7 residents) 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

INSPECTOR