



Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2022

Appeal Ref: APP/N4720/X/21/3282688

2 Sefton Avenue, Beeston, Leeds LS11 7BA

- 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 Sam Watterson against the decision of Leeds City Council.
 - The application Ref 20/08582/CLE, was dated 17 December 2020. It was refused by notice dated 18 June 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 as a dwellinghouse as a House in Multiple Occupation (C4) to ground first and second floors and self-contained flat to basement.
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Decision

1. The appeal is dismissed in part, with regard to the use of the property as a House in Multiple Occupation (HMO) in Class C4 and is allowed in part, with regard to the use of the self-contained flat to the basement. A Lawful Development Certificate is attached accordingly. See formal decision below.

Procedural matters

2. Further to the case officer's letters to the parties, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on all of the detailed submissions. The appellant and the Council have agreed to the appeal proceeding without a site visit and I am satisfied that, in dealing with it in this manner, no injustice is caused. I have also dealt with the appeal on the basis of the date on the application form as opposed to the date that it was 'accepted' by the Council.

Introduction and matters of clarification

3. An appeal relating to a LDC is confined to the narrow remit of reviewing the LPA's reasons for refusal and then deciding whether the reasons are well-founded. The planning merits of the case do not fall to be considered and the relevant test, relating to the submitted evidence, is '*the balance of probability*'. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient

information to support a LDC application and that, without sufficient, precise and unambiguous information a LPA may be justified in refusing to grant a certificate. However, PPG also indicates that if an LPA has no contrary evidence itself and there is none from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.

4. For this appeal application, as can be seen from the description above, the development(s) for which a LDC is sought comprises two separate and distinctly severable parts. The first is for '*use as a dwellinghouse as a House in Multiple Occupation (C4) to ground, first and second floors*' and the second is for the '*use of self-contained flat to basement*'.

5. The legislation relating to applications for Lawful Development Certificate applications is set out in Section 193 of the Act. Section 193 (4) indicates that a certificate under Sections 191 (as in this case) or 192 may be issued:

- (a) *for the whole or part of the land specified in the application, and*
- (b) *where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them.*

6. In this case, therefore, and because the two parts are clearly severable, I consider it necessary to consider whether or not each separate part of the development was lawful on the date of the application, 17 December 2020. I am satisfied that in dealing with the appeal on this basis no injustice will be caused.

7. The application was made under the Section 191(1)(a) of the 1990 Act and the appellant contends that the ground, first and second floors have been used continuously, as an HMO, in excess of 10 years prior to the date of the LDC application and that the basement has been in use continuously, as a flat, in excess of 4 years from the date of the application.

Background information

8. The appeal property is a red-bricked, terraced building in this predominantly residential area of Leeds. It has frontages to both Sefton Avenue (to the front) and Hardy Street (to the rear), where it is referred to as No 9 Hardy Street. There are concrete yard areas to the front and rear of the property. Access to the basement is directly from Hardy Street and the ground floor accommodation can be accessed from both street frontages.

9. The property lies within an area which is the subject of an Article 4 Direction (A4D), dated 10 February 2012. The result of this is that permitted development rights were withdrawn from that date in relation to any change of use from a Class C3 dwellinghouse to a small HMO falling within Class 4.

10. Existing floor plans were submitted with the application. These are all numbered 03/03/20 and indicate the following: The *Basement Existing Layout* shows a living room/kitchen, a bathroom, a bedroom and two small stores: The *Ground Floor Existing* shows an entrance lobby, an inner lobby, a WC, a bedroom, a lounge and a kitchen: The *First Floor Existing* shows a landing area, a kitchen and two other large rooms. The *Second Floor Existing* shows a landing area, a kitchen, a bedroom, a lounge and a bathroom.

11. An additional floor plan has been submitted at this appeal stage which was not submitted with the LDC application. This shows the rooms that were shown on the

application plans and, on behalf of the appellant, it is indicated that because alterations had not been carried out at the time of the application, the proposed works shown on the application plans have been omitted. I have taken all of the submitted plans, including this later plan into account and I am satisfied that in doing so no injustice will be caused.

12. The property was the subject of an Improvement Notice served by the Council on the 19th April 2017 under the provisions of the Housing Act 2004. A subsequent inspection by the Housing Officer, was carried out on the 19th January 2018, when breaches of the *Management of Houses in Multiple Occupation (England) Regulations 2006* were identified. Proof of the offences were submitted with the LDC application to which this appeal relates.

Reasons

The use of the ground, first and second floors as a Class C4 HMO

13. Normally, in order to have been lawful at the date of the application, the house would have had to have been in multiple occupation Class C4 for a continuous period of 10 years prior to that date. That would mean that it would have to have been in that use on or before 17 December 2011.

14. However, the A4D was not issued until 10 February 2012. The main issue in this case, therefore, is whether there is sufficient precise and unambiguous evidence to demonstrate, on the balance of probability, that the house was in use as a Class C4 HMO any time prior to 10 February 2012. If this was the case it would be lawful. If not the case, then it could not acquire the necessary 10 year immunity period between 10 February 2012 and the date of the application, 17 December 2021. The appellant's argument is that the Class 4 HMO use did commence before the A4D date and continued thereafter, without interruption, until the date of the LDC application.

15. I acknowledge that, following the action under the Housing Act, the Council accepts that in 2017 and 2018 all three floors were being used as an HMO and that facilities were shared. The Housing Officer's report confirmed this and classed the property as an HMO for which a License was required, with the exception of the basement. However, the fact that it was in such a use at that time does not mean, in itself, that the HMO use was lawful for planning purposes on the date of the LDC application.

16. I now turn to the evidence submitted in relation to the occupation of the property in support of the contention that it has been in an HMO Class C4 use prior to 10 February 2012, had been used as such for the required 10 year period and, therefore was lawful on 17 December 2021.

17. Although it is indicated that the property was purchased in 1990 with the intention to form a flat and HMO, the earliest dated Assured Shorthold Tenancy Agreement (AST), for the ground floor, is dated 31/8/09. There is nothing to indicate how the property was occupied between 1990 and 2009.

18. There are a total of 17 ASTs but only 4 pre-date the date of the A4D. These are the ones dated 31/8/09 (first floor); 24/12/10 (ground floor); 1/1/10 (top floor) and 16/5/11 (top floor). All of the others post-date the date of the A4D and thus do not assist in establishing whether or not the Class C4 HMO use commenced before 10 February 2012.

19. However, these 4 ASTs simply indicate that different individuals occupied different floors of the house for the periods of the tenancy. There is no other firm evidence to indicate that these tenancies had resulted in the occupation of the house by between 3 and 6 unrelated individuals, who shared the basic amenities of the house such as the kitchens and bathrooms. The evidence submitted, my view, is imprecise and ambiguous. Between 2009 and 2011, the ASTs simply indicate that 4 individuals lived in the main house (on different floors) but there is a total lack of evidence with regard to the character of that usage. Nor is there any other supporting documentation to go alongside the ASTs which assist in establishing how the various kitchens and bathrooms in the property were shared or used.

20. Like the Council, I question why most of the ASTs refer to full floors. In theory, if a specific floor was let to a specific person then one would normally expect the occupation of that floor would be restricted to that tenant. I accept that the tenant could then have shared the accommodation on any specific floor but that is not the same as sharing the whole house and amenities within it.

21. In any case there is no detailed information which links any of the ASTs with the contention that the house was being shared by up to 6 persons at any specific time. Neither is there any separate AST for the whole 3 floors of the house.

22. In addition to the question of the letting of floors, as opposed to rooms, there are other factors which cause me to question the exact basis upon which these 3 floors of the property were let and occupied. For example the first of the ASTs (31/8/09 first floor) refers to 'Flat Top Floor Flat s/c'. The words 'FLAT/BEDSIT' appear in the heading to the AST with the word 'BEDSIT' clearly crossed off and the 's/c' would normally be shorthand for self-contained.

23. If this was indeed self-contained then any occupier would not need to share any of the other basic amenities of the house. It is also not clear whether this AST related to the first floor as scheduled in the appeal appendices or to the top floor. A later AST for the first floor (17/1/19) also clearly refers to 'Flat 1', rather than to a room. From this it would appear that the letting of the property, at least for some of the floors, had continued to be carried out after 10 February 2012 on the basis of full floors or the equivalent of a self-contained flat.

24. Two other ASTs (23/11/19 and 17/1/19) for the first floor and the top floor respectively appear to have been agreements between the owner and the same named individual. Again this seem odd as this tenant would have ceased to have any agreement to occupy any other floor of the property, when apparently moving from the first floor accommodation to the top floor accommodation. Both of these floors, in any case, had all of the necessary facilities for day to day living or to be used as self-contained flats.

25. I do not question the AST details set out by the appellant relating to the actual occupants and when that occupation took place. However, I do not consider that the evidence is sufficiently precise and unambiguous to indicate that the dwellinghouse was occupied as a HMO (C4) prior to the issue of the A4D or indeed for any continuous relevant 10 year period.

26. It seems to me that, since 2009, the property has been occupied as some sort of 'hybrid' property, partly let as full floors or flats, albeit with some shared facilities. As a matter of fact and degree, I do not consider that this can be equated with a

Class C4 HMO use, where between 3 and 6 unrelated individuals have occupied the house and shared the basic amenities such as kitchens or bathrooms.

27. From all of the evidence it seems to me that it was not until 2017/18, (when the housing officer became involved), that it seemed to be being used more typically as an HMO, rather than as self-contained floors/flats. However, even then the officer referred in his report to '4 units of accommodation' (presumably the basement and the 3 other floors), as well as to a 'flat' and an 'attic flat'.

28. All of the above factors reinforce my view that it has not been demonstrated that the 3 floors of this dwellinghouse were in use as an HMO (C4) prior to 10 February 2012 and that the use had subsequently continued until the date of the LDC application. I conclude, therefore that the house was not in lawful use as a small Class C4 HMO on that date.

29. In reaching my conclusion I have taken into account all other matters raised on behalf of the appellant with regard to this use. These include the reference to the judgment in *Basingstoke and Deane BC v SSCLG [2009] EWHC 1012 (Admin)* which deals with breaks in the occupation of a property. However, the continuity issue is not critical in this case. For the reasons given above, it is on the imprecision, ambiguity and quality of the evidence provided, that my decision has turned.

30. Whilst acknowledging that the Council did not consider the two elements of the application separately, I find that their arguments in relation to refusing a LDC for the HMO (C4) use to be sound. The appeal, therefore, fails with respect to this use and a Lawful Development Certificate will not be issued for the use of the three floors as a Class C3 HMO.

The use of the basement flat

31. The main issue is whether or not there is sufficient precise and unambiguous evidence to demonstrate, on the balance of probability, that the basement flat has been used continuously as a self-contained dwelling for a period of 4 years prior to the date of the LDC application.

32. From the submitted plans it is clear that the basement flat has all of the necessary facilities for day-to-day living (see *Gravesham Borough Council v Secretary of State for the Environment: QBD 1982*). The Council does not dispute that this is the case. It is also evident that the basement flat has its own dedicated access from Hardy Street (No 9).

33. On behalf of the appellant it is stated that use of the basement, as a flat, goes back to 1990, although the ASTs only go back as far as 2009. The tenants' list provided by the appellant in relation to this appeal, indicates that the flat was occupied in 2009 and the AST information is corroborated by a letter from Leeds City Council regarding a Housing Benefit claim. This links the AST with the named tenant.

34. However, to show that the flat has been in use for the necessary 4 year period it is only necessary for the appellant to demonstrate that it has been used as a separate dwelling since on, or before, 17 December 2017 which is the date of the LDC application.

35. From the ASTs, it is evident that the basement was occupied by a named tenant on 7 January 2017. This is before 17 December 2020 but after 22 January 2017

when the LPA accepted the application. Correspondence from Leeds City Council, in respect of Housing Benefit was sent to this same named tenant on 28 February 2017 at the '*Basement Flat, 9B Hardy Street*'. This also referred to earlier correspondence on the 24 January and 7 February 2017. The tenancy had been confirmed by the owner on 11 January 2017.

36. The Council had addressed the letter to the '*Basement Flat (9B)*' and in my view the full history demonstrates that the occupation had commenced more than 4 years from the date of the LDC application.

37. The next AST indicates that another tenant occupied the basement flat from 10 April 2017, again with confirmation that the address was '*9B Hardy Street*'. A letter relating to '*Job Seeker's Allowance*' dated 7 September 2017 is in the name of the same tenant. The next AST, dated 5 April 2018, also clearly relates to the occupation of the basement flat, as does occupation by the next tenant from 11 June 2018. The evidence is that this tenant occupied the basement flat from that date up until and including the date of the LDC application.

38. Having considered the submitted evidence in relation to the basement flat and, on the basis that the Council has not provided any evidence, directly or from others, to make the Appellant's case less than probable, I can only conclude that, on the date of the LDC application, the basement flat was lawfully in use as a separate self-contained dwelling. It follows that a LDC should be issued to this effect and the appeal succeeds in relation to this part of the application. This is attached below.

39. In reaching my conclusion with regard to this part of the LDC application, I have taken into account all other application and appeal matters raised on behalf of the appellant and by the Council. However, none carries sufficient weight to alter my decision that the Council's refusal to grant a LDC in relation to the basement flat was not well-founded.

Formal Decision

40. The appeal is allowed in relation to the use of the basement as a self-contained flat and a Lawful Development Certificate for this use is attached below.

41. The appeal is dismissed in relation to the use of the ground, first and second floors as a Class C4 House in Multiple occupation. A lawful development certificate is not issued for this use.

Anthony J Wharton

Inspector



The Planning Inspectorate

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 17 December 2020, the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason: no enforcement action could be taken against the use being carried out.

Signed

Anthony J Wharton Inspector

Date: 28 January 2022

Appeal Reference: APP/N4720/X/21/3282688

First Schedule

Use of the basement as a self-contained flat

Second Schedule

Basement Flat, 9 Hardy Street/2 Sefton Avenue, Beeston, Leeds LS11 7BA

Notes:

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

It certifies that the development described in the First Schedule, at the property 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 development described in the First Schedule; to the property specified in the Second Schedule and to the plans submitted with the LDC application as follows: *Basement as Existing, Watts and Co Plan, dated 03/03/20, Scale 1:100* and Location Plan, 2 Sefton Avenue, dated 3 December 2020, Scale 1:1250. For the avoidance of doubt the certificate does not apply to any other part(s) of the property at 2 Sefton Avenue/9 Hardy Street.

Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.