



Appeal Decisions

Site visit made on 18 January 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Appeal A: APP/U5930/X/20/3257994

40 Chatham Road, Walthamstow, London, E17 6EU

- 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 Ms Emma Doyle against the decision of Waltham Forest London Borough Council.
 - The application ref 193774, dated 19 November 2019, was refused by notice dated 19 June 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 property as a house in multiple occupation (HMO) (Class C4).
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Appeal B Ref: APP/U5930/X/21/3272618

40 Chatham Road, Walthamstow, London, E17 6EU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Emma Doyle against Waltham Forest London Borough Council.
 - The application ref 202717 is dated 1 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 use of property as a house in multiple occupation (HMO) (Class C4).
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Procedural Matter

3. The use sought is not described directly in the application forms, but the Council's decision notice relating to Appeal A provides an adequate description. It is evident that the 2 applications sought the same thing, and I consider them together below. The Council did not determine Appeal B within the statutory period, but it is clear that it would have refused the application if it had determined it. I have had regard to all the evidence submitted in relation to both appeals, irrespective of whether it was before the Council at the time of

the applications. Since the information has all been made available to the Council during the appeal, there can be no injustice arising from this.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC was (or in the case of Appeal B, would have been) well-founded. This turns on whether the use of the property as a House in Multiple Occupation (HMO) (Use Class C4) was lawful when the applications were made.

Reasons

General approach to LDCs

5. Advice relating to LDCs is provided by the Government's Planning Practice Guidance (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, 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 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. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits are not relevant.

The requirements to establish lawfulness in this case

6. The use sought falls within Class C4 of *The Town and Country Planning (Use Classes) Order 1987* (as amended) (the 'Use Classes Order'). Class C4 is *Use of a dwellinghouse by not more than six residents as a 'house in multiple occupation'*.
7. As set out in the Use Classes Order, 'house in multiple occupation' has the same meaning as in section 254 of the Housing Act 2004. That section includes alternative tests to be applied to decide if a building or part of one is an HMO. Whichever test is applied, it is clear that the property could not comprise an HMO falling into Class C4 unless it is occupied by between 3 and 6 people who do not form a single household, with rent or some other consideration being paid in respect of at least one person. There are other requirements as well, depending on which test is applied.
8. Section 191(2) of the Town and Country Planning Act 1990 (as amended) states that:

For the purposes of this Act uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

9. No enforcement notice was in force at the date when the applications were made. Accordingly, my decisions hinge solely on section 191(2)(a). The time limits for enforcement action referred to in that section are set out in

section 171B. In this case, section 171B(3), which specifies a ten year period for 'any other breach of planning control', applies.

10. It is common ground that prior to September 2014, the property benefited from permitted development provisions which would have enabled it to move between use as a dwellinghouse (Class C3) to use as a Class 4 HMO. However, on 16 September 2014 an Article 4 Direction which prevented change from Class C3 use to a Class C4 use in the Borough came into effect. Consequently, the HMO use would have been lawful when the LDC applications were made if the property had already been in use as a C4 HMO when the Article 4 Direction came into effect, provided the use was not subsequently abandoned or changed.

The appeal property

11. The appeal property is a terraced house. The appellant has provided floorplans showing 2 floors of accommodation. However, when I visited the property it had been altered and provided an additional floor of accommodation in the roof space. There was 1 bedroom on the ground floor, 2 on the first floor and 2 on the second floor. Each of the rooms had a lock on the door. There was a bathroom or shower room on each floor. I have not been given details of when the building was altered. However, in 2015 an application was made for an LDC for a single storey rear extension and rear roof dormer and roof lights, so it is possible that the works were carried out following that application. Land registry documentation from 2018 shows the appellant as owner of the property. The appellant states that she bought the house in 2007.

The appellant's evidence

12. The appellant has provided the following evidence:

- Land registry title deed and title plan
- Statutory declaration by the appellant dated 19 November 2019
- Statutory declarations by various tenants at the property
- Photographic ID belonging to tenants
- Floor plans for 40 Chatham Road
- Various documents said to show an HMO use, including landlord insurance policy documents, gas/electrical safety certificates and an energy performance certificate
- An HMO licence dated 29 March 2019
- Various pieces of correspondence to tenants at the property.
- Email correspondence with the Council.

The use of the property when the Article 4 Direction came into effect

13. The appellant advises that the property was occupied as an HMO by the same 5 individuals during the period April 2014 until February 2015. This is set out in the appellant's statutory declaration. Two further statutory declarations from tenants each state that they occupied the house between April 2014 and February 2015. Photographic ID of the tenants are provided and there is some correspondence addressed to them at the appeal property during this period as well.
14. Although I have not been provided with tenancy agreements, the evidence in the 3 statutory declarations in relation to this period is clear and consistent, and I have no evidence to contradict it in that regard. Accordingly, I conclude,

on the balance of probability, that the building was in use as a C4 HMO when the Article 4 Direction came into effect in September 2014. The same evidence also indicates that the use continued until February 2015.

The use of the property after the Article 4 Direction

15. I am told that the Article 4 Direction prevents movement from C3 to C4 use without a specific grant of planning permission. There is no suggestion that it prevents changes in the other direction from C4 to C3 use. Thus, in order to have been in lawful C4 use when the LDC applications were made, the property had to remain in C4 use and not revert to C3 use. If it reverted to C3 use at any time after the Article 4 Direction, permission would be needed to subsequently change back to a C4 use again.
16. It is important to distinguish between a pause in an established use and a change of use. If the property was not in active use for a period of time, perhaps during building works, that would not ordinarily cause the use to cease (provided the period was not so lengthy as to amount to the abandonment of the use). However, if there was a change to a different use, such as a C3 dwellinghouse, permission would be needed to change it back to C4 again. Consequently, any evidence suggesting that the use changed after the Article 4 Direction was made is relevant to the case.
17. The Council has provided the application form for an earlier application for an LDC made in March 2015. The application sought an LDC for a single storey rear extension, a rear roof dormer and roof lights. In a section of the form concerned about the use of the property, the existing use is said to be a 'House in single family occupation'. Elsewhere on the form, the use class is stated as being C3. The address for the applicant is given as being 40 Chatham Road. In the part of the form dealing with the applicant's interest in the land, a box is ticked to show that the applicant, who is not the appellant in this appeal, is the owner of the property. The declaration, indicating that the information in the form is believed to be true, is signed and dated. Regardless of any previous use of the property, this is clear evidence suggesting that it was in use as a C3 dwellinghouse when that application was made.
18. The appellant states that the application was prepared and submitted by a building contractor and his architect and insists that the house was in use as a C4 HMO at the time. However, the applicant was apparently a person who lived at the property at the time and is stated to be its owner (this is in apparent contradiction to the statement that the current appellant has owned the property since 2007, but is not challenged or explained). Consequently, the applicant could be expected to know how the property was used. The form was completed by somebody acting as an agent, but such a person would be reliant on the owner/occupier of the property for information about its use. There is no clear explanation before me regarding the reasons for the discrepancy between the 2015 application and the current claims regarding the use of the property at that time.
19. The appellant's statutory declaration states 'Since 2nd February 2008, it has not been occupied other than by between 3 and 6 unrelated individuals as their only/main residence. That continues to be the case as at today. Throughout this period, the occupiers have shared a kitchen, bathroom and lavatory facilities'. This is not, however, a clear statement that it was used as an HMO throughout this period. Whether or not it was an HMO would be dependent on

factors other than those referred to in the declaration, including the question of households (which is not simply a matter of whether the occupiers are related). I cannot see anything in the statutory declaration to directly contradict the evidence that the building was in C3 dwellinghouse use when the 2015 application was made. While HMO use may be implied, I attach greater weight to the clear and specific position stated in the 2015 application form.

20. Other documents such as landlord insurance documents, gas/electrical safety certificates and the energy performance certificate are indicative of rental activity at the property but, again, do not show HMO use. Taking the evidence before me as a whole, it seems likely to me that the property was in use as a C3 dwellinghouse at the time the 2015 application was made. Consequently, it did not meet the definition of an HMO at that point in time. Since that was less than 10 years before the applications subject to this appeal were made, it follows that the use could not have subsequently become lawful due to the passage of time. Accordingly, the lawfulness of the use has not been established, on the balance of probability.
21. The Council granted an HMO licence for the property in March 2019, but that does not show lawfulness in planning terms. I have noted the appellant's concerns regarding the Council's handling of the applications and appeals, but that has no bearing on my assessment of the lawfulness of the use.

Conclusion

22. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Appeal A was well-founded. Had it refused to issue a certificate in respect of Appeal B, that decision would also have been well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeals.

Peter Willows

INSPECTOR