The Planning Inspectorate

Appeal Decision

Site visit made on 18 January 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2022

Appeal Ref: APP/U5930/X/21/3279431
1 Renness Road, Walthamstow E17 6EX

- 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 Noahaab Kilijee against the decision of Waltham Forest London Borough Council.
- The application ref 210877, dated 23 March 2021, was refused by notice dated 27 May 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 a dwelling house by 3-6 residents as a 'house in multiple occupation'.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the use of the property by 3-6 residents as a house in multiple occupation (HMO) was lawful when the application was made.

Reasons

General approach to LDCs

3. 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

4. The use sought falls within Class C4 of *The Town and Country Planning (Use Classes) Order 1987* (as amended) (the 'Use Classes Order'), which is: *Use of a*

dwellinghouse by not more than six residents as a 'house in multiple occupation'.

5. Section 191(2) of the Act 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.

6. No enforcement notice was in force at the date when the application for the LDC was made. Accordingly, my decision hinges solely on s191(2)(a).

7. Section 171B of the Act sets out the relevant time limits for enforcement action. In this case, s171B(3), which specifies a ten year period for 'any other breach of planning control', applies.

8. 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. The appellant does not state which test is relied on but, in any event, HMO use would involve occupation by persons who do not form a single household. Additionally, section 254(5) states: *'But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.'* The list at Schedule 14 includes 'Any building which is occupied only by two persons who form two households'. Thus, irrespective of other considerations, the property was not in use as an HMO at any time when it was occupied by only 1 or 2 people. The Use Classes Order also places an upper limit of 6 occupants on the C4 use class.

9. 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 C4 HMO. However, on 16 September 2014 an Article 4 Direction which prevented change from Class C3 use to Class C4 use in the Borough came into effect. Consequently, the HMO use applied for would have been lawful when the LDC application was made if:

   - The property was already in that use when the Article 4 Direction came into effect; and
   - The use was not subsequently abandoned or changed.

The appeal property

10. The appeal property is an end of terrace house. The appellant has provided floorplans showing that it provides accommodation over 3 floors, with 5 bedrooms, a kitchen/dining/living area, 2 bathrooms and a separate WC. There is no dispute that it was in use as a Class C4 HMO at the time of the LDC application.

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

11. The appellant says that the property was already in use as a C4 HMO when the Article 4 Direction came into effect. Evidence for this has been provided in the form of an assured shorthold tenancy agreement (AST). The AST is for a 12 month term commencing on 20 August 2014. Four individuals are named as tenants, which would be consistent with a C4 HMO use. The Council accepts that this document could indicate an HMO use and I have no reason to come to any contrary view. I therefore conclude, on the balance of probability, that the building was in use as a C4 HMO when the Article 4 Direction came into effect. It appears that the HMO use continued until the AST term came to an end in August 2015.

The use of the property after the Article 4 Direction

12. 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 application was 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 to a C4 use again. On the other hand, a pause in the use, as opposed to an active change of use, would not usually cause the use to cease. It is important, therefore, to consider whether there is evidence of any change of use after 16 September 2014.

13. The appellant has provided an AST dated 22 August 2015. The term stated in the agreement is 12 months commencing 22 August 2015, although I am told the arrangement with the named tenant, Mr Uddin, continued until February 2017. Unlike the earlier AST, there is just one tenant named in the document. The document states that the tenant cannot sublet the property or let any other persons live at the property and that the property is to be used as a single private dwelling. It also states that the tenant must not allow the number of occupants to exceed the maximum number specified in the tenancy agreement without prior written consent, and indicates that exceeding the maximum could lead to the landlord being fined or prosecuted due to HMO and licensing regulations. On the face of it, this is clear evidence that the property was let as a Class C3 single dwellinghouse and not a Class 4 HMO.

14. The appellant says that the property was, in fact, sub-let to others and used as an HMO. In support of that, the appellant has provided the following evidence relevant to this period:

    - A letter from a lettings company - Completion Sales and Lettings - dated 20 August 2015.
    - A print-out of payments made to the appellant's bank account
    - Information from Companies House relating to the company London Dreams Global Ltd.
    - A number of statutory declarations
    - A signed and witnessed supporting statement dated March 2021

15. The letter of August 2015 is addressed to Mr Nasir Uddin and Mr Mohammad Jabed (London Dreams Global Ltd). It is addressed to them at 1 Renness Road, suggesting that one or both of them lived there (or were about to live there). It says, 'Your tenancy start date will be 22nd August 2015, regarding your request to have shares at the above property has been acknowledge and we authorise you to have shares.'

16. It is difficult to be sure what is meant by this. It is possible it means the property may be shared, but that could refer to just the two individuals named in the letter sharing it. In any event, it is not clear evidence that permission was given to sublet the property or use it as an HMO, and the fact that Mr Jabed had an interest in London Dreams Global Ltd, a company concerned with property management, does not change that. I have not been given any written agreements relating to any subletting and no details of who the property might have been sublet to during this period.

17. The bank account printout appears to show that Mr Jabed was paying rent for 1 Rennes Road between July 2016 and December 2016. This does not, however, show that he was subletting it.

18. The statutory declaration of Agnieszka Maik states that Ms Maik managed the letting of the property since 18 August 2014. It states that 'On 22 August 2015 the property was rented to Mr Nasir Uddin, who subletted it on a room by room basis. This continued until 17 February 2017'. It adds 'to the best of my knowledge and belief, the property has been used as a House in Multiple on a continuous and uninterrupted basis since 18 August 2014'. The statutory declaration of Wikki Shafi, a Lettings Consultant at Completion Sales and Lettings, makes the same statements.

19. A further statutory declaration is made by Jalal Khan, who has carried out property maintenance for Completion Sales and Lettings at the appeal property since 2011. The declaration states 'to the best of my knowledge and belief, the property has been used as an HMO on a continuous and uninterrupted basis since 18 August 2014'.

20. However, the view expressed in the declarations that the property has been in HMO use for an extended period appears to me to be based on a quite general assessment, and it is not clear whether those making the declarations had a good understanding of the definition of an HMO for planning purposes. There is no reference to the various requirements to meet the definition of an HMO and the declarations do not state the number of people who occupied the property while it was let to Mr Uddin.

21. There is no explanation either of why a contract specifically prohibiting the subletting of the property was completed if the intention was to sublet it. This is a significant omission, given that one of those making the declarations apparently managed the letting of the property at the time. Nor is there any attempt to explain the meaning of the 2015 letter and its reference to having 'shares'. Overall, the generalised assertions in the statutory declarations do not outweigh the very clear and specific provisions set out in the 2015 AST. I have been provided with statutory declarations from tenants from later periods, but they have no bearing on my findings relating to the time Mr Uddin rented the property.

22. The supporting statement appears to have been written by a planning consultant. However, Ms Maik has signed the document (together with a witness) and confirmed it to be true in accordance with the provisions of the Statutory Declaration Act 1835, and I have treated it accordingly. Nevertheless, the document adds little to the claims in the evidence discussed above. While it states that the property was sub-let by Mr Uddin, it acknowledges that the evidence relating to this period is scant.

23. It is argued that it would have been irrational not to let the property as an HMO, since that would secure a better rental income. However, a decision regarding who to rent the property to might not be based on income alone. I am also mindful that market conditions might change over time, and so cannot assume that an HMO would always be the most commercially attractive option.

24. Overall, given the very specific ruling-out of sub-letting and HMO use by the 2015 AST, there would need to be clear evidence to persuade me that the property was, in fact, in HMO use at that time. Such evidence as has been provided is insufficient to show such use. Accordingly, I conclude that the building was not in C4 HMO use in the period August 2015-February 2017.

25. In March 2017, the property was let to Thomas Deak. I have been provided with further statutory declarations by 3 individuals who state that, from 6 March 2017, they rented the property from Mr Deak, who was subletting it at the time. This appears to be in direct contradiction to the AST I have been provided with, which has similar terms to those that applied to Mr Uddin in respect of subletting.

26. But even if I were to give the appellant the benefit of the doubt on that point, it would have no bearing on my decision. These further statutory declarations do not relate to the period when Mr Uddin was renting the property and have no bearing on my conclusion that the property was not in HMO use at that time. Since Mr Uddin rented the property until February 2017, less than 10 years before the LDC application was made, it follows that a C4 HMO use cannot have subsequently become lawful due to the passage of time, regardless of whether Mr Deak sublet the property or not.

27. The Council accepts that there is sufficient information to suggest that the property was in use as an HMO from September 2018, a view I share. However, for the reasons outlined above, that could not make the use lawful by the time of the LDC application. The Council granted an HMO licence for the property in November 2018, but that has no bearing on the question of lawfulness in planning terms. While I accept that there is no evidence to suggest that the property has ever been let to more than 6 people, I am not persuaded that it has always been let to the 3 or more necessary for an HMO, for the reasons I have given.

28. The Council advises that Council Tax records list the property as a single-family dwelling, but further details have not been provided and it is not possible to draw any firm conclusions from this. Nevertheless, the evidence before me suggests, on the balance of probability, that the building was in use as a C3 dwellinghouse and not a C4 HMO in the period August 2015-February 2017. This is a substantial period of time and cannot be regarded as a *de minimis* deviation from its use before or since. As I have explained, this means that the C4 HMO use cannot have been lawful when the LDC application was made in March 2021.

Conclusion

29. 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 of a dwelling house by 3-6 residents as a 'house in multiple occupation' 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 and dismiss the appeal.

Peter Willows

INSPECTOR