



Appeal Decision

Site visit made on 23 March 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2022

Appeal Ref: APP/U5930/X/20/3254654

25 Mansfield Road, Walthamstow E17 6PH

- 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 I.A.A. Properties against the decision of Waltham Forest London Borough Council.
 - The application ref 200278, dated 31 January 2020, was refused by notice dated 27 March 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 a dwelling house as an HMO.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Section 5 of the application form refers to the existing use as 'use of a dwelling house as an HMO'. Section 4 of the form indicates that the existing use falls within Class C3 of The Town and Country Planning (Use Classes) Order 1987 (as amended) (the 'Use Classes Order'). It is clear that this is an error, since Class C3 is concerned with Dwellinghouses.
3. Use as an HMO by not more than 6 people falls within Class C4. An HMO for more people does not fall within any use class. In this case the appellant has not stated how many people occupy the property. However, there are various references to Class C4 in the appellant's statement and the appeal form describes the use as 'Use of property as a house in multiple occupation (HMO) (Class C4)', which reflects the description on the Council's decision notice. Accordingly, I have considered the appeal on the basis that the certificate sought is for use of the property as a house in multiple occupation (HMO) for not more than 6 residents (Class C4)'.

Reasons

General approach to LDCs

4. 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

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. The time periods for taking enforcement action are set out in s171B of the Act. In this case s171B(3), which specifies a 10 year period for 'any other breach of planning control', applies. Thus, the use could have become lawful if it had continued for a 10 year period prior to the application for the LDC. Although the appellant refers to a 4 year period, that would only apply if the change of use related to use as a single dwellinghouse (s171B(2)). This case, however concerns a claimed Class C4 use, which is use of a dwellinghouse as an HMO. In the Use Classes Order, Class C3 is labelled 'Dwellinghouses', whereas Class C4 is labelled 'Houses in Multiple Occupation', reflecting the fact that it relates to a different use, even if the property remains a dwellinghouse in physical terms. Accordingly, I am not persuaded that s171B(2) applies.
8. 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. This means that use as a C3 dwellinghouse within the 10 year timeframe would not undermine the appellant's case, provided the property was in C4 use at the point the Article 4 Direction came into effect and was not subsequently abandoned or changed. The Article 4 Direction and the permitted development rights that previously applied are only relevant to fluctuations between C3 and C4 uses, not to changes to other uses, such as use as an HMO for more than 6 residents.

Assessment

9. The appeal property is a terraced house. The appellant has provided a floorplan drawing (Drawing No 279-03) showing accommodation over 3 floors. The plan shows a kitchen/dining room, living room and two bathrooms, together with 6 rooms numbered 1-7 (there is no 'Room 3').
10. When I inspected the property, the layout was similar, but the rooms were not used exactly as shown in the drawing. In particular, the front room on the ground floor, shown as a living room on the submitted plan, was in use as a

bedroom, whereas 'Room 1', also on the ground floor, had no bed and was laid out as a dining room, with a table and fridge.

11. In support of its case the appellant has provided a signed witness statement (also referred to as a statement of truth) and various documents relating to the property such as tenancy agreements. Land Registry documentation shows that the property is owned by the appellant company, although that does not show anything about its use. The witness statement, which is dated 22 December 2020, advises that the property has been in continuous use as an HMO since 21 July 2014 (before the Article 4 Direction came into effect). It does not, however, make any specific claim that the property was used as a Class C4 HMO for up to 6 residents during that time.
12. Two tenancy agreements indicate that the property was let to 3 tenants in the periods 14 June 2014 to 13 December 2014 and 24 November 2015 to 23 November 2016. That is potentially consistent with a C4 HMO use. However, the Council advises that the property had 7 bedrooms with 9 occupants when visited by a Council officer on 30 June 2016, which was during the period of the second tenancy agreement. This indicates that it was not used as a C4 HMO at that time, since the maximum of 6 occupants was exceeded. It is not clear how long it was occupied by that number of people, but the Council reports that, at a second visit on 1 November 2016, there were only 6 rooms used as bedrooms and only 6 occupiers. The Council's reporting of these site visits is not disputed and shows that the number of tenants stated on the tenancy agreements provided is not a reliable indication of the number of actual occupants at any one time.
13. I have not been provided with any tenancy agreements for the period between November 2016 and January 2020, when the application for an LDC was made, and there is no firm evidence regarding the number of people occupying the property throughout that period. However, the plan provided in relation to an application for an LDC¹ for works to the building (Drawing No 279-01) shows the property with 7 bedrooms. That suggests that the 7 bedrooms noted by the Council officer in June 2016 was not a one-off occurrence. Since 7 bedrooms suggests at least 7 occupants, it appears that the property was not in use as an HMO for 6 or fewer people at that time.
14. The appellant has provided an electricity bill, letters relating to the recovery of gas and electricity payments and insurance documents. These documents indicate that the property was rented out, as does the use of letting agents, but do not show who it was rented to or how many occupants there were.
15. 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.
16. Overall, the evidence shows that the property has been rented out for an extended period since before the Article 4 Direction came into effect. This may well have been for use as an HMO, as indicated in the appellant's witness statement. However, it appears that the number of occupants has varied and, at times, has exceeded 6. Since 2 separate pieces of evidence indicate this at different points in time (the Council inspection and the LDC application floor plans) I cannot assume that such use was a minor departure from the normal

¹ Ref 200277

use/occupation of the property and cannot rely on the tenancy agreements as a reliable indication of the number of occupants. Overall, therefore, it has not been demonstrated, on the balance of probability, that the use of the property as a C4 HMO was lawful at the point when the LDC application was made.

17. It might be argued that any change in the number of occupiers of the property was 'non-material', notwithstanding the provisions of the Use Classes Order. The full extent of the fluctuation in occupation levels is not clear from the information before me. Nevertheless, it appears that 9 people occupied the property at one time, which would be a 50% increase compared to the maximum of 6 permitted by Class C4. It seems to me that such a significant intensification in the use would be likely to change the character of the use due to the effects of increased comings and goings, noise and so forth, and would therefore amount to a materially different use. Moreover, I cannot assume that 9 was the maximum number of occupiers of the property, based on the information before me. Consequently, I am not persuaded, on the balance of probability, that there has been no material departure from C4 use during the relevant period.

Conclusion

18. 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 the property as a house in multiple occupation (HMO) for not more than 6 residents (Class C4) 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