



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 June 2022

Appeal Ref: APP/U5930/X/20/3256145
70 Granleigh Road, Leytonstone E11 4RQ

- 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 Nicholas Hales against the decision of Waltham Forest London Borough Council.
 - The application ref 201307, dated 27 April 2020, was refused by notice dated 3 July 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 described in the application form as: '70, Granleigh Road is a 3 bedroom, 2 reception room dwelling. It has been a privately rented residence to unrelated professional individuals since 2008. We have been notified by the letting agent that a HMO licence is not required instead to apply for a Lawful development Certificate given its existing use'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Procedural Matter

2. The description entered in the application form is not entirely clear. The form also indicates that the current use of the property falls within Class C3 (Dwellinghouses) of *The Town and Country Planning (Use Classes) Order 1987* (as amended). However, it is clear from the submitted information that the appellant does not, in fact, seek to demonstrate a C3 use. The decision issued by the Council describes the proposal as 'Use of property as a house in multiple occupation (HMO) (Class C4)'. That description has not been called into question by the appellant. It is also consistent with the case the appellant has made out and with the reference to an HMO in the appellant's description. Accordingly, I have determined the appeal on the basis that this is what the appellant actually seeks a certificate for.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether, on the balance of probability, the use of the property as a house in multiple occupation (HMO) (Class C4) was lawful when the application was made.

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.

Assessment

5. Class C4 is 'Use of a dwellinghouse by not more than six residents as a 'house in multiple occupation'.

6. 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.

7. 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).
8. The time periods for taking enforcement action are set out in s171B of the Act. In this case s171B(3), which specifies a ten year period for 'any other breach of planning control', applies.
9. 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.
10. In fact, the Council accepts that the property was lawfully used as a C4 HMO when the Article 4 Direction came into effect in September 2014. It also acknowledges that it was in C4 use when the LDC application was made in April 2020. The dispute is focused on the lack of evidence relating to the use of the property during the period 1 April 2015 to 10 September 2019.
11. In order to address that concern, the appellant has provided additional information with the appeal. As the Council fairly points out, it could only make its decision based on the information available to it at the time. Nevertheless, I

must have regard to all of the relevant information before me. The information now provided includes the following:

- Monthly statements from letting agents indicating that the property was let to 4 named tenants (2 of whom appear to have been related) for a period including April 2015 - April 2018. The statements cover nearly every month for this period, with only minor gaps.
- A tenancy agreement with 3 tenants for a 12 month period commencing 10 September 2018.
- A tenancy agreement with 3 tenants for a 12 month period commencing 10 September 2019.
- Documents relating to rent arrears and the termination of a tenancy in 2018.

12. The Council has not disputed the veracity of these documents. The monthly statements indicate that the property was let to 4 tenants during the period April 2015 to April 2018. The two tenancy agreements indicate that the property was let to 3 tenants for a 2 year period from September 2018. This is consistent with Class C4 HMO use.

13. Since it is accepted that the property was in lawful use as a C4 HMO up until April 2015, it is important to consider whether there is any evidence to indicate that the use subsequently changed. While there was a significant 4 year gap based on the information the appellant provided to the Council with the application, the additional information now provided strongly suggests that the property continued to be used as an HMO for 3 or 4 people from April 2015 until the LDC application was made. While the submitted information does not relate to every single month during that time, I have no evidence to indicate that the use of the property changed and continued HMO use therefore appears likely.

14. Viewed as a whole, the evidence before me indicates, on the balance of probability, that the property continued in lawful use as a C4 HMO from the time the Article 4 Direction came into effect until the LDC application was made.

Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use of property as a house in multiple occupation (HMO) (Class 4) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and issue a certificate accordingly.

Peter Willows

INSPECTOR

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 27 April 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It is common ground that the property was in lawful use as a C4 HMO in September 2014. There is significant evidence indicating, on the balance of probability, that the property remained in that use up until the Lawful Development Certificate application was made, and no substantive evidence to suggest otherwise.

Signed

Peter Willows

Inspector

Date: 10 June 2022

Reference: APP/U5930/X/20/3256145

First Schedule

Use of property as a house in multiple occupation (HMO) (Class C4)

Second Schedule

Land at 70 Granleigh Road, Leytonstone E11 4RQ

IMPORTANT NOTES – SEE OVER

NOTES

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

It certifies that the use described in the First Schedule taking place on the land 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 use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 10 June 2022

by **Peter Willows BA MRTPI**

Land at: 70 Granleigh Road, Leytonstone E11 4RQ

Reference: APP/U5930/X/20/3256145

Scale: Not to Scale

