
Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 23 June 2022

Appeal Ref: APP/C5690/X/21/3271300

97 Ringstead Road, London SE6 2BT

- 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 Mehmet Sisman against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/20/119802, dated 30 December 2020, was refused by notice dated 17 March 2021.
 - The application was made under section 192(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 C4 residential use - 6 rooms with a maximum of 6 people.
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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 proposed use which is considered to be lawful.

Procedural Matters

2. I have read comments made by interested third parties carefully. However, I must make a determination as to lawfulness and it is not for me in deciding upon this LDC matter to take into account issues of planning merit.
3. It was not necessary to make a site visit to determine the appeal.

Main Issue

4. The main issue in the appeal is whether or not the Council's decision to refuse the LDC application was well-founded.

Reasons

5. Article 3(1) and Schedule 2 Part 3 Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) provides general planning permission for development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) to a use falling within Class C4 (houses in multiple occupation) of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO). The creation of separate dwellinghouses within the building is not permitted.
6. There appears to be no dispute between the parties that the pre-proposal use of the building was as a single household dwelling under Class C3 of the UCO, and I am satisfied in the absence of any evidence submitted to the contrary that this was so.

7. Class C4 of the UCO concerns use of a dwellinghouse by no more than 6 residents as a house in multiple occupation (HMO). The standard test for an HMO¹ is, in essence, that it consists of living accommodation which is not self-contained and where separate occupying households share one or more basic amenities such as a toilet, personal washing facilities or cooking facilities. The application and accompanying plans unambiguously propose a development which is within this C4 Class, and therefore it is a permitted change of use from C3 under the GPDO.
8. The Council refused the LDC application upon its view that the appeal property would likely not be used as proposed. However, it is necessary to consider an application made under section 192 of the Act on the basis of what is actually proposed and not on the basis of un-proposed development the decision-maker speculates might occur. Clearly, were unlawful development to occur outside of a granted LDC, the Council has discretionary enforcement powers with which to deal with it.

Conclusion

9. 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 C4 residential use 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.

Andrew Walker

INSPECTOR

¹ Section 254 of the Housing Act 2004

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 30 December 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use is lawful by virtue of Article 3(1) and Schedule 2 Part 3 Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended which provides general planning permission for development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) to a use falling within Class C4 (houses in multiple occupation) of the Town and Country Planning (Use Classes) Order 1987 as amended.

Signed

Andrew Walker
Inspector

Date 23 June 2022

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First Schedule

A use falling within Class C4 (houses in multiple occupation) of the Town and Country Planning (Use Classes) Order 1987 as amended

Second Schedule

Land at 97 Ringstead Road, London SE6 2BT

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were 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 /operations 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 23 June 2022

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Land at: 97 Ringstead Road, London SE6 2BT

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Scale: Do not scale

