# Appeal Decision

**by Elaine Gray MA(Hons) MSc IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 July 2022**

**Appeal Ref: APP/G5750/X/20/3265206**
**35 Alexandra Street, Canning Town, London E16 4DL**

- 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 Kiran Samani against the decision of the Council of the London Borough of Newham.
- The application Ref 20/02437/CLE, dated 3 November 2020, was refused by notice dated 10 December 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 as 'applying for C3 (Dwelling) to C4 (HMO)'.

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding an LDC application or appeal. The relevant test of the evidence is 'the balance of probability', and the burden of proof rests on the appellant.

3. As the determination of this appeal turns on matters of law, it was not necessary for me to carry out a site inspection.

## Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

## Reasons

5. The appeal site is a two storey terraced property with five bedrooms. It falls within the scope of an article 4 direction that came into effect on 31 July 2013, removing permitted development rights for the change of use of properties in Use Class C3 (dwellinghouses) to Use Class C4 (houses in multiple occupation).

6. In broad terms, a Class C4 HMO use covers small houses or flats occupied by up to six unrelated individuals who share basic amenities. The term 'basic amenities' includes toilet facilities, personal washing facilities and cooking

facilities. A key test of HMO use is that the living accommodation is occupied by persons who do not form a single household.

7. In order for the appeal to succeed, the appellant needs to submit sufficient precise and unambiguous evidence to show that the building was in use as an HMO by the time the article 4 direction was made in July 2013, with the effect that planning permission was not needed for the change of use to Class C4.

8. A review of the Council's licensing records also show that the property has had selective licenses in place since 2012 which allow the property to be lawfully occupied as a family dwelling. There is no evidence of any HMO licenses having been issued or requested.

9. The appellant states that he bought the property in 2009 and has let it as an HMO since that time. He submits a number of tenancy agreements, the earliest of which is dated 7 February 2011. Three tenants are named, who from their surnames seem to be unrelated, and the agreement is for a period of twelve months until 7 February 2012.

10. Of concern here is the lack of substantive evidence of the manner of occupation by tenants, for example, with regard to the degree of sharing of basic facilities. It is possible for up to six unrelated persons living together to reside as a single household, so that the use remains in Use Class C3. This may occur, for example, where there are longstanding friendships or where students live together as a single household, sharing domestic activities including cooking and cleaning. While tenants being unrelated is one consideration it is not the only one in assessing whether there is an HMO use.

11. On a close reading of the 2011 tenancy agreement, this seems to point towards the letting of the house to the three tenants on the basis that they were to form a single household. Paragraph 1 of the document states that the agreement is for the letting of a 'dwelling'. Paragraph 16, which relates to misuse, states that the tenant will use the premises only as a 'private dwelling house'. This is at odds with the usual situation whereby rooms within HMOs tend to be let individually.

12. Crucially, the inventory at the end of the document indicates that the whole dwelling was let to these three tenants as a single household, given that it includes five beds, seven wardrobes, and kitchen appliances, amongst other things. There is nothing in this document to suggest that the appeal site was being let as an HMO at that time.

13. The same three tenants went on to sign a further tenancy agreement for the letting of the dwelling house from 7 February 2012 until 7 June 2013, at which time they moved out for the property to be refurbished. The fact that they renewed the agreement together further points to their being a group of friends or close associates who lived as one household.

14. The appellant indicates that building work and the fitting of a new kitchen took place during the summer of 2013, which is supported by the Council tax record confirming that an empty property discount was applied from 15 July 2013 to 14 August 2013. The next agreement, from 12 September 2013 to 11 September 2014, is signed by five tenants letting the house. Again, there is little evidence to suggest that they occupied the house in any manner other than as a single household.

15. It is not until 2014 that there is evidence of rooms being let individually, which indicates a pattern of occupation that is more consistent with HMO use. The appellant provides three agreements showing rooms being let to individual tenants in August 2014. After that, the tenancies revert to the letting of the whole house to groups of four or five people under a single agreement, all of which point to single household occupation.

16. With regard to the Property Licence ref: 18/10268/HOSELE, valid from March 2018 to February 2023 for a single household, the appellant says that this was applied for in error, and that he never intended to rent the house to a family. Be that as it may, this evidence does not support the appellant's stance that the building has been used as an HMO. I have also had regard to the Energy Performance Certificate dated 28 October 2020, but this is not relevant to my assessment of the way in which the building has been occupied.

17. For the sake of completeness, I also address immunity from enforcement for a change of use to an HMO. Having regard to section 171B of the Act as amended, the relevant period for issuing an LDC on the basis of immunity is ten years before the date of application. The application date is 3 November 2020. The building therefore needs to have been in continuous occupation as an HMO from 3 November 2010 or before to acquire lawfulness.

18. However, in view of my findings above, there is insufficient evidence to show that the required ten year period of continuous HMO use had elapsed by the date of application and the appeal cannot succeed on the basis of the section 171B time limits for immunity from enforcement.

**Conclusion**

19. Taking the above factors into account, I find that the appellant's evidence is not sufficiently precise and unambiguous to show that the property was in use as an HMO in Use Class C4 at the date of the article 4 direction. There has not been a change of use amounting to permitted development, and there is not immunity from enforcement having regard to the section 171B time limits for enforcement action.

20. I therefore conclude that the Council's decision not to issue an LDC was well-founded, and the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Elaine Gray*

INSPECTOR