The Planning Inspectorate

Appeal Decision

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2022

Appeal Ref: APP/U5930/X/22/3297679
16 Alexandra Road, Leyton, London E10 5QQ

- 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.
- The appeal is made by Ms Demetroula Demetriou (c/o Helen Cramer) against the decision of Waltham Forest London Borough Council.
- The application ref 220056, dated 11 January 2022, was refused by notice dated 14 March 2022.
- 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: The property is used as a house in multiple occupancy – 4 people. The applicant applied for the additional HMO licence from October 2020 before the deadline of 31/10/20 when additional HMOs came into force.

Decision

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

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the required information is included with the application and appeal documents, a decision can be reached on the papers[1]. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

3. The question being asked in any application for a certificate of lawfulness (LDC) under section 191(1)(a) is whether any existing use of buildings or other land is lawful. That lawfulness is to be determined at the time of the application, which in this case is 11 January 2022.

4. The use for which an LDC is sought is described by the appellant as in the banner heading above. This description has been modified by the council to 'Lawful Development Certificate (Existing) - Use of property as a house in multiple occupation (HMO) (Class C4)'. Based on the evidence before me, it is considered this is a more accurate description. I will therefore proceed with the

[1] The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

appeal on the basis of this description as there will be no injustice to the appellant.

Main Issue

5. This is whether the council's refusal to grant a certificate of lawful use was well-founded. In this particular case this turns on two requirements:

   - Whether the appellant can show, on the balance of probabilities, that the material change of use to Class C4 occurred before the making of the Article 4 Direction; and

   - Whether the appellant can show that the lawful use sought has continued without any other intervening uses until the date of the application, so as to be immune from enforcement action.

Reasons

6. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant and the test of the evidence is the balance of probabilities. The appellant's own evidence does not have to be corroborated by 'independent' evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate. This is on the basis that it is sufficiently precise and unambiguous.

7. The first requirement is to demonstrate that a material change of use to Class C4 occurred before the council's Article 4 Direction was made on 16 September 2014. This is because prior to that date no express planning approval was required for this development. A material change of use to Class C4 purposes, without the need for express planning approval, was permitted by the Town and Country Planning (General Permitted Development) Order 1995, as amended by the Town and Country Planning (General Permitted Development) Amendment No 2 Order 2010. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) provides for the use of a dwellinghouse as an HMO by not more than 6 residents; that is up to 6 unrelated individuals who share basic amenities.

8. Evidence for this has been provided by the appellant in the form of a signed assured shorthold tenancy agreement and copies of bank statements. The tenancy agreement is for a 12 month term commencing on 22 February 2014. Three individuals are named as tenants, and each have signed the agreement. This would be consistent with a C4 HMO use. Furthermore, copies of bank statements from 1 February 2014 to 2 March 2015 show regular monthly deposits by Glenmead Limited t/a Spencers Property Service who are named as the "landlord's agent" on the tenancy agreement. I am satisfied on the basis of the evidence provided that the use of the property for Class C4 purposes began in February 2014 before the Direction was made. 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.

9. Turning to the second requirement as to whether the Class C4 use has continued without any other intervening uses until the date of the application, namely 11 January 2022. The appellant's evidence to support this aspect of their case is largely based on the tenancy agreements and bank statements.

Assessment of evidence of continued use:

February 2014 – February 2018

10. Bank statements show monthly payments made each month from March 2014 to March 2022, with the exception of January and February 2018 and March 2021.

11. Between March 2014 and December 2015, payments were made by Glenmead Limited, the landlord's agent.

12. Between January 2016 and December 2017 monthly payments were received from Ms Garcia who is listed as a tenant on the tenancy agreement between February 2014 and February 2018. Two others are listed and the agreement is signed by the three individuals with different surnames which suggests to me that the tenants are not related and therefore not occupying the property as a single household.

13. During this period there is no tenancy agreement between February 2015 and February 2016 (12 months) or between February 2017 and August 2017 (6 months). The appellant explains this was due to a rolling agreement whereby the tenants remained in the property on a month by month basis. I note from the agreement that the tenancy may continue as a "contractual periodic tenancy" until ended following either party giving notice[2]. From the evidence provided, which shows that payments were made each month and that Ms Garcia and two others were listed as tenants both at the beginning in February 2014 and at the end in February 2018, I am satisfied that during this period, and without any other intervening uses, the use of the property was as an HMO.

March 2018 – March 2021

14. Bank statements show monthly payments from March 2018 to February 2021. During this period, the payments were received from Mr Csucs.

15. There are tenancy agreements in place for Mr Csucs and two others, with different surnames, between:

    22 February 2018 to 22 July 2019

    22 September 2020 to 21 March 2021

16. There is no tenancy agreement provided for the period between August 2019 and August 2020 (12 months) although monthly payments continued to be made by Mr Csucs. The appellant again explains that this was due to a rolling agreement whereby the tenants remained in the property on a month by month basis. I note from the agreement that the tenancy will continue as a "contractual periodic tenancy" until ended following either party giving notice[3]. From the evidence provided for this period, which shows that payments were made each month by Mr Csucs and that Mr Csucs and two others were listed as tenants both at the beginning in February 2018 and at the end in March 2021, I am satisfied that during this period, and without any other intervening uses, the use of the property was as an HMO.

[2] Section 1.6.1
[3] Section 2

April 2021 to April 2022

17. Bank statements show monthly payments from April 2021 to March 2022. During this period, the payments were received from Portico Property. '16 Alexandra' is referenced on the bank statements. A tenancy agreement was in place and signed by four new tenants with different surnames for the period from 17 April 2021 to 16 April 2022. I am satisfied, therefore, that the use of the property during this period, and on the date of the application for the LDC, was as an HMO.

Conclusion

18. Whilst evidence was substantially lacking at the application stage, the evidence provided as part of the appeal process is unambiguous and shows that the use of the property as a Class C4 HMO came into effect before the Article 4 Direction was made and has operated as such on a continual basis, without any other intervening uses, up to and including the LDC application date, which was 11 January 2022.

19. Therefore, 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 the use of the property as a Class C4 HMO 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.

S A Hanson

INSPECTOR

The Planning Inspectorate

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 11 January 2022 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(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the appeal property as a Class C4 HMO commenced before the council's Article 4 Direction was made and has operated as such on a continual basis, without any other intervening uses, up to and including the LDC application date, which was 11 January 2022.

Signed

S A Hanson
INSPECTOR

Date: 15 August 2022
Reference: APP/U5930/X/22/3297679

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

Second Schedule

Land at: 16 Alexandra Road, Leyton, London E10 5QQ

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 would have been lawful, on the certified date and, thus, 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 August 2022

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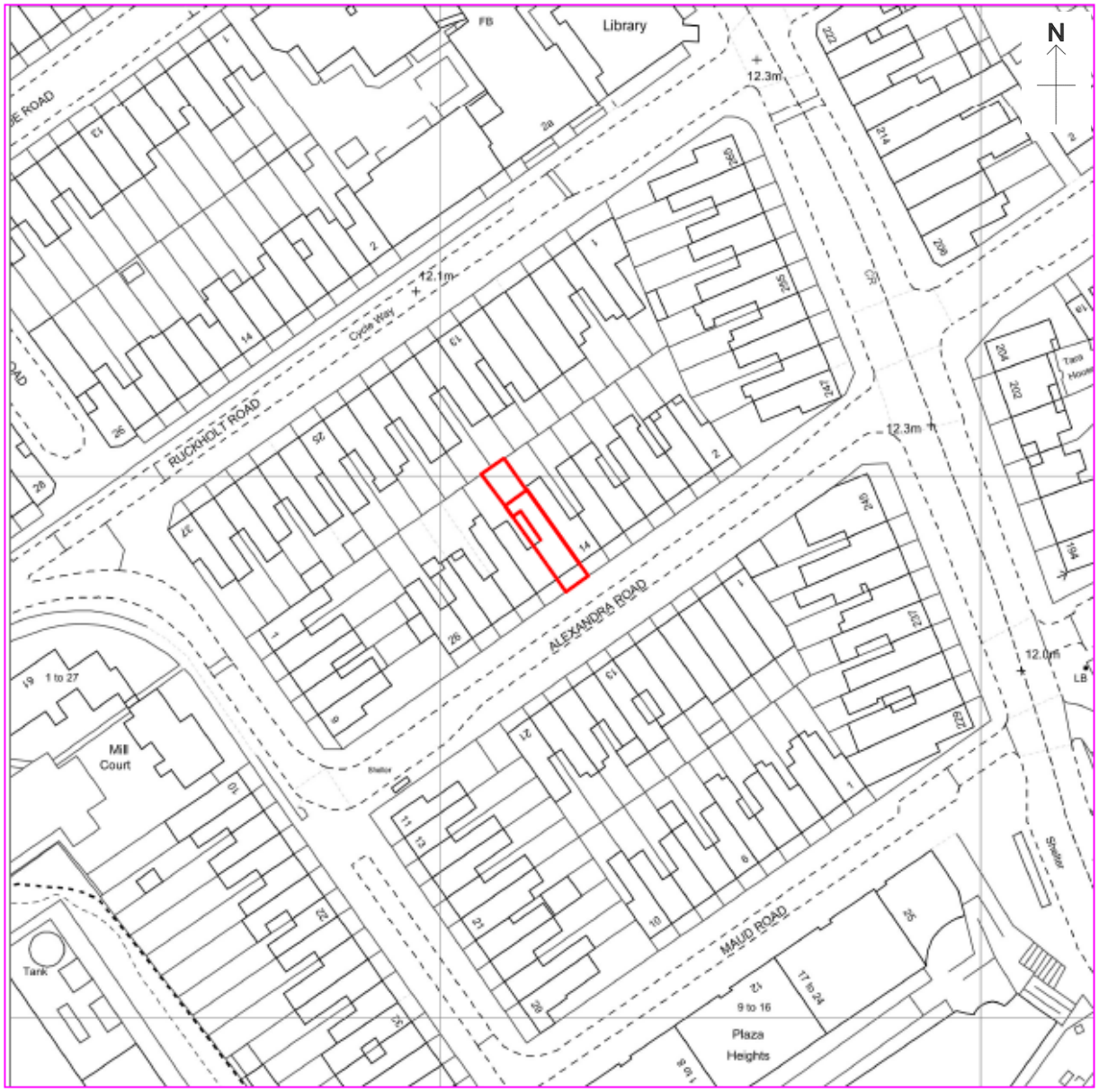
Reference: APP/U5930/X/22/3297679

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