



Appeal Decision

Site visit made on 26 June 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2022

Appeal Ref: APP/U5930/X/20/3263797

302 Lea Bridge Road, Leyton E10 7LD

- 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 [hereafter referred to as "LDC"].
 - The appeal is made by Ms Nahida Akhtar against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 200849, dated 23 January 2020 was refused by notice dated 4 May 2020.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is '*proposed C3(a) to C3(c) house conversion under permitted development rights*'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters and Background

2. The completed application form indicates a proposed change of use from class C3(a) to class C3(c). The former is defined in the Town and Country Planning (Use Classes) Order 1987, as amended as, most pertinent to this particular case, "*use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other)*". The latter category, instead allows for "*groups of people (up to six) living together as a single household*". This covers those groupings that do not fall within the class C4 (small HMO) definition, but which fell within the previous C3 use class, to be provided for that of a small religious community, or a homeowner living with a lodger.
3. However, the single-sheet Planning Statement submitted along with the application states in the penultimate paragraph: "*Therefore the change of use to Class C3(a) to C3(b) does not require planning permission*". Although I could perhaps consider this as a typographical error it takes on some relevance as the property, at the time of my site visit, was not laid out to suggest an ongoing C3(a) use as it suggested a disproportionate amount of bedroom floorspace relative to the property as a whole. Moreover, most of the property appeared unoccupied to the extent that a future use, outside the parameters of the limitations of class C3(a) might commence at some future point, when fitted out. Admittedly, this is conjecture and the appellant's intentions might

be otherwise, but it does represent my perception of the planning position here.

4. In this respect I am also mindful of the Council having refused planning permission (ref 180943) in 2018 for what the then applicant, Ms Nahida Akhtar – who I note is the appellant for the current appeal – described on her application form as a change of use of a 9-bed dwelling into a House in Multiple Occupation (HMO). The decision was later unsuccessfully appealed and the Inspector, in her decision letter (*APP/U5930/W/19/3220264*) dated March 2019, refers to there being nine bedrooms, including four on the first floor and two on the second floor.
5. These upper floor bedrooms are also shown on the plans which accompanied the application the subject of the current appeal; namely drawing nos 655/01 and 655/02 that depict the existing and proposed layouts, respectively. The other three bedrooms referred to were apparently on the ground floor. Aside from the kitchen/diner and a conservatory the other rooms, although seemingly not yet properly occupied, are labelled on both said drawings as 'living room', 'reception' and 'study'. From the previous appeal Inspector's comments all these three rooms were in use as bedrooms at the time of her site visit.
6. This, in effect, meant that the property was, at the time, in use as a HMO which, given the high number of bedrooms, is categorised as a sui generis use, falling outside the parameters of the C class uses.

Main Issue

7. The main issue is whether the Council's decision not to issue an LDC was well founded.

Reasons

8. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 23 January 2020. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful. The determination is to be made against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as subsisted at the time of the application which, hereafter, I shall refer to as "the GPDO".
9. In an appeal under s195 of the Act against the refusal of a LDC the planning merits and/or impacts of the use applied for do not fall to be considered. Instead, the decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant, and I shall reach my decision on the various evidence before me and also the observations at my site visit.
10. Insofar as the various considerations in this appeal are concerned the correct approach to be taken is as laid down by the Court of Appeal in *Waltham Forest LBC v SSETR & Tully* [2002] EWCA Civ 330. Here it was held that it is necessary to compare the proposed use with the actual existing use, and not with some notional use that might be lawful. Accordingly, an LDC will not normally be granted under s192 without evidence about the character of the existing use.

11. In this particular case, from both the evidence adduced and also my observations of the property's internal layout, there is nothing compelling to suggest that the property is in use, or has been at any time recently used, as a category C3(a) dwelling. This throws into doubt the basis of the application at appeal, and, moreover, given the circumstances described, I cannot see what exactly would be gained by the appellant should the evidence allow for a LDC to be issued with the wording in accordance with the stated proposal on the application form.
12. Accordingly, the application made was not the correct vehicle, and has not provided the precision and unambiguity essential to LDC related cases. Instead, the approach taken should perhaps be a two-stage process; firstly, ascertaining the lawful use of the property by way of a s191 application to the Council and then, on this basis, assessing whether the future intended use would be permissible under the Use Classes Order, or whether a planning permission would be required to achieve that use.
13. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a LDC was well founded, and the appeal does not succeed. I shall therefore exercise my powers under section 195(3) of the 1990 Act as amended.

Timothy C King

INSPECTOR