



Appeal Decision

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2022

Appeal Ref: APP/U5930/X/22/3298066

75 Albert Road, Walthamstow, London E17 7PT

- 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 Emmanuel Decesare against the decision of the Council for the London Borough of Waltham Forest.
 - The application ref 213286, dated 5 October 2021, was refused by notice dated 3 December 2021.
 - 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 C4 small HMO.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Planning Inspectorate initially made arrangements for the appeal to be dealt with under the written representations procedure following a site visit. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers, that is, without a site visit, without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans and documentary evidence to understand the nature of the site given the grounds of appeal and points in dispute.
3. The parties were contacted on 19 October 2022. Both the Council and the appellant subsequently confirmed that they were happy to proceed on the basis that I would not carry out a site visit.
4. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.

Main Issue

5. The main issue is whether the decision by the Council to refuse to grant an LDC is well-founded.

Reasons

6. The appellant seeks to establish that the use of the appeal site as a small scale house in multiple occupation (a C4 HMO) is lawful. The Act establishes that uses are lawful at any time if no enforcement action may then be taken in respect of them. The appellant's contention is that the time for enforcement action has expired.
7. The appellants view is that the relevant time period within which enforcement action could have been taken is 4 years on the basis that a C4 HMO can fall within the meaning of a single dwellinghouse. The plans show that the ground floor of the property has a kitchen, living room, bathroom and one bedroom and that there are three further bedrooms and a bathroom on the first floor. This layout lends itself to occupation either by a single household or by a group of people sharing facilities. However, the application relates to Class C4 use which is the use of a dwellinghouse by not more than six residents as a "house in multiple occupation".
8. Use of a dwellinghouse including by not more than six residents living together as a single household falls within Class C3. However, the appellant is not contending that the occupiers of 75 Albert Road are living together as a single household. This is the key difference between a Class C3 dwellinghouse and a Class C4 HMO.
9. Under section 171B(2) of the Act where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. However, there is no dispute between the parties that the building was in Class C3 use before any change of use occurred.
10. Consequently, change of use to a Class C3 dwellinghouse would not be the description of the breach. In order to show immunity from enforcement action the breach would have to have been use as a Class C4 HMO. It follows that the immunity period in this case, which falls into 171B(3) of the Act as 'any other breach of planning control' is 10 years.
11. The application is dated 5 October 2021. Therefore, it is necessary for the appellant to establish that the change of use of the property occurred on or before 5 October 2011 (the relevant date) and the use continued uninterrupted for ten years or more thereafter.
12. The summary in the appellant's planning statement refers to the building being subject to a tenancy agreement between a landlord and four tenants for the period 09/10/10 to 08/10/11. The appellant says the contract then rolled over until 09/07/12 and a further agreement was entered into between 09/07/12 and 08/07/13. Prior to the relevant date the appellant accepts that there is a gap in evidence between 2006 and 2008 but refers to tenancy agreements for the periods 09/05/08 to 08/05/09 and 09/06/09 and 08/06/10.
13. The appellant relies on these tenancy agreements to establish the use as a C4 HMO over a four year period. There is a 3 month gap in the continuity of the tenancies, which has not been explained.
14. However, regardless of the quality of the evidence to demonstrate 4 years of use, for the reasons set out above the appellant must show 10 years

continuous use from the relevant date. Following the expiry of the tenancy in July 2013, the next tenancy agreement does not commence until August 2015. This gap is fatal to the continuity of evidence between 5 October 2011 and 5 October 2021.

15. Both parties refer to the information on the Council's database which says that a Private Rented Property Licence (PRPL) was granted for one household and four occupants from 5 September 2015 to 31 March 2020. The appellant considers that this document supports his case because it matches the tenancy agreement and number of occupants during that period. Even if that were the case, the PRPL does not cover the period between July 2013 and August 2015 for which there is an absence of evidence regarding the use of the building.
16. In respect of Council Tax, the appellant says that he was not aware that the use of a property between 3-6 unrelated individuals constitutes a C4 HMO until a year before the application was made. For that reason, he had not listed it as an HMO for Council Tax purposes or sought an HMO licence. However, the reference or lack of reference to C4 HMO use as part of Council Tax records is not determinative in this case.
17. For the reasons set out above the appellant has not shown, on the balance of probabilities that the change of use of the property occurred on or before 5 October 2011 and the use continued uninterrupted for ten years or more thereafter. Therefore, it has not been shown that the use is lawful on the basis that no enforcement action may then be taken because the time for enforcement action has expired.
18. The Council refers to its Article 4 Direction which requires that planning permission be granted for development consisting of a change of use to a use falling within Class C4 from a use falling within Class C3. As I have found that the appellant has not demonstrated that the use occurred on or before the relevant date and continued uninterrupted for ten years or more thereafter, it is not necessary for me to consider this matter in any detail.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Class C4 HMO use at 75 Albert Road, Walthamstow, London, E17 7PT was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Sarah Dyer

Inspector