



Appeal Decision

Site visit made on 28 June 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 November 2022

Appeal Ref: APP/U5930/X/20/3263652

14 Lambourne Road, London E11 1DY

- 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 Ms Esther Jacobson against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 202707 is dated 30 July 2020.
 - The application was made under section 191(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 described as 'C4'
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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 existing use which is considered to be lawful.

Main Issue

2. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

3. In an appeal under s195 of the Act against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence is one of balance of probability. As such, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.
4. Use class C4 is defined by small houses which are occupied by between 3 and 6 unrelated residents as a house for multiple occupation (HMO) where they share basic amenities such as kitchens or bathrooms and use it as their only (or main) residence.
5. The four year rule in s171B(2) applies to enforcement notices concerned with a material change of use of a single dwellinghouse to flats or some other subdivision of a residential building. However, s171B(2) does not apply in cases where there has been a change of use to an HMO or some other residential use where units are not self-contained. Even if there had been a material change to a use within class C4, there will not have been a change of use to a single

dwellinghouse. The ten year rule set out under s171B(3) would therefore apply in such cases.

6. On this basis the material date would be ten years before the application was made; being 30 July 2010. However, in 2014 the Council introduced an Article 4 Direction to prohibit changes from Class C3 to C4 without the benefit of a formal planning permission. The Direction took effect on 16 September 2014 and, as such, this has become the material date from which immunity against enforcement action must be demonstrated before the LDC sought can be potentially issued.

The evidence

7. In support of her case the appellant has produced various evidence, and asserts that the property has been rented since 2004 and was, until recently, managed by Theydon Property Services. This is corroborated by the following documents which have been provided:
 - A letter dated 5 July 2005 from Theydon Property Services indicating that they have found new tenants;
 - An e-mail dated 1 September 2011 from Theydons saying there are four students living at the property, and there is only one contract (a joint and severable agreement);
 - An e-mail dated 12 February 2013 from Theydons within which it is mentioned that there are tenants living at the property;
 - A letter dated from the Council's Neighbourhood & Commercial Services Directorate 16.8.18 saying it had granted a private rented property licence, valid until March 2020;
 - A letter from Theydons dated 30.7.20 saying they have been the property's management agents since August 2005 and, since 2009, there have been various tenants (no more than four at any one time throughout this period);
 - A letter from Theydons dated 1 September 2020 indicating that four people currently live at the premises;
 - A letter from the appellant, accompanying the appeal, saying that the property has been professionally let and managed by licensed estate agents for the past 16 years involving 12 month tenancy agreements. Also, since September 2020, the agents, Foxtons, have managed the property.
8. In addition to the above a series of signed Shorthold Tenancy Agreements have been provided. These cover the periods August 2007 to August 2008 (two tenants), August 2012 to August 2014 (four tenants), March 2016 to March 2017 (three tenants), March 2017 to March 2018 (three tenants), June 2018 to June 2019 (three tenants) and July 2019 to expiring July 2020 (four tenants).

Assessment

9. The Council attempts to counter the appellant's evidence by saying that its Property Licensing Team has indicated that the property's license in effect at August 2018 referred to three households and three occupants. A subsequent license was then issued for four tenants. However, this is not a determinative matter, as the C4 definition allows for between three and six unrelated persons residing at the property.
10. Accordingly, whether or not there are three or four tenants is not relevant to this appeal. The critical issue is that no more than six tenants reside there,

otherwise the property would be termed as a large HMO (sui generis), outside the scope of class C4.

11. In terms of the tenancy agreements submitted, and the claim that the property has been tenanted since 2004, there are gaps in the documentation which would have demonstrated a continuous use since. Whilst, for the purposes of this appeal it is not necessary to show this was the case before September 2014 there is no such evidence to cover the period August 2014 to March 2016. That said, taking the various evidence as a whole and the reality of the background, it seems more likely than not that the appellant's version of events and the property's tenancy history is sufficiently credible for its purpose here.
12. I have had due regard to the Council's representations but this is relatively limited, both in detail and substance, and the balance of probabilities falls in favour of the appellant. Accordingly, I am satisfied that the property was continuously used as a class C4 HMO from 16 September 2014 until the date of the application for the LDC sought.
13. In conclusion, for the reasons given above, the evidence available suggests that, on the balance of probability, the use was lawful on 30 July 2020, within the meaning of section 191(2) of the Town and Country Planning Act 1990.
14. Accordingly, I will exercise my powers under section 195(2) of the Act.

Timothy C King

INSPECTOR

Lawful Development Certificate

APPEAL REF. APP/U5930/X/20/3263652

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191

(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)

(ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 30 July 2020 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown edged in red on the plan attached to this certificate was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The time period for enforcement had expired and the use did not contravene any of the requirements of any enforcement notice or breach of condition notice then in force.

Date: 09 November 2022

First Schedule

Use of the property as a class C4 HMO

Second Schedule

14 Lambourne Road, London, E11 1DY

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful on the certified date and, thus, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. 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.

