



---

## Appeal Decision

Site visit made on 10 November 2022

**by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

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

**Decision date: 21 November 2022**

---

**Appeal Ref: APP/Y5420/X/21/3287774**

**56 Gloucester Road, Tottenham, London N17 6DH**

- 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 Jean-Claude Nzau-Matomisa against the decision of the Council of the London Borough of Haringey.
  - The application Ref HGY/2021/1010, dated 26 March 2021, was refused by notice dated 7 October 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 a small HMO.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I have noted that there is a dispute between the main parties with respect to the description of the development for which the LDC was being sought. The application was made for a LDC for a small HMO whereas the Council has stated in its reason for refusal that "*the applicant has not produced clear, precise and unambiguous evidence to support their claim that the use of the application site is a HMO/flats for ten years*". That is a misrepresentation of the appellant's case because the appellant clearly sought to establish the lawful use of the property as a small HMO (C4).
3. The appellant has stated that the use description on the application form is C4 small HMO and a small HMO is a dwellinghouse. Therefore, he states that the relevant time period is 4 years. Under s171B(2) the immunity period with respect to a single dwellinghouse is four years and concerns 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 has been a material change of use to a use within class C4; that is, 'the use of a dwellinghouse...as a ' HMO there will not have been a change of use to a single dwellinghouse and the ten year rule set out in s171B(3) will apply in such cases.

### Main Issue

4. The main issue is whether the Council's refusal to issue an LDC was well founded. That will turn on whether the appellant has proved on the balance of

probability that the use of the property changed to use as a small HMO on or before 26 March 2011 and that the use then continued without significant interruption for 10 years after the date of the change.

### **Reasons**

5. In support of his application the appellant submitted a range of evidence including tenancy agreements, energy bills and an affidavit. The appellant's declaration states that the property has been in continuous use as a 4 bedroom HMO for a period of 10 years, but paragraph 4.2 of his Appeal Statement states that evidence was provided to show that the house has been in use as a small HMO for at least 4 years and in fact since 2013. His final comments then go on to say that the property has been used as a small HMO continuously since 2011. These anomalies bring into doubt the appellant's evidence.
6. Furthermore, Room 2 does not show any tenancy agreements until 18 January 2017, Room 3 does not appear to have been occupied in 2017 and Room 4 was not occupied in 2017, 2019 and 2020. These gaps demonstrate that there has not been continuous occupation during the material period. There are no utility bills covering the period 2011 to 2014 when it is claimed that the property was being used as a small HMO and there are further gaps in the utility bill evidence. British Gas bills show the same tenant, but from 2013 to 2016 there is no record of that tenant having a tenancy agreement at the property. This also brings into question the accuracy of the evidence.
7. There is also a dispute between the main parties regarding Council Tax Bills and, in particular whether such evidence was submitted to the Council. On the basis of the evidence now before me, there is a gap in Council Tax for the years 2016 to 2018. The appellant has explained that 2017 to 2018 is missing because the bill was lost. Even if that is the case the Council Tax evidence does not cover the full 10 year period on or before 26 March 2011.
8. The appellant has also stated that the photographic evidence submitted by the Council shows that the rooms have been in existence for a considerable amount of time, showing that the rooms do not look new, but instead have significant wear and tear. That may be the case, but there are no timescales related to this evidence and therefore it holds very little weight.
9. The evidence before me does not show on the balance of probability that the property changed to a small HMO on or before 26 March 2011 and that the use then continued without significant interruption for 10 years after the date of the change.

### **Conclusion**

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a small HMO 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.

*A A Phillips*

INSPECTOR