



Appeal Decisions

Site visit made on 24 January 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal A Ref: APP/T5150/X/22/3300105

96 Village Way, LONDON NW10 0LL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by NDB Holdings Limited against the decision of the Council of the London Borough of Brent.
 - The application ref 22/0549, dated 14 February 2022, was refused by notice dated 9 May 2022.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which an LDC is sought is a six-person HMO (Use Class: C4).
-

Appeal B Ref: APP/T5150/W/22/3300107

96 Village Way, LONDON NW10 0LL

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
 - The appeal is made by NDB Holdings Limited against the decision of the Council of the London Borough of Brent.
 - The application Ref 22/0506, dated 14 February 2022, was refused by notice dated 9 May 2022.
 - The development proposed is the retrospective change of use of the property to a six-person C4 HMO.
-

Decisions

1. Appeal A is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.
2. In these circumstances I take no action in respect of Appeal B.

Preliminary Matter

3. The description of the use in both appeals is a 6-person house in multiple occupation (HMO), with the description in Appeal A taken from the Council's decision notice. However, the relevant statutory definition in Class C4 of Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (as amended) ("the UCO") is "use of a dwellinghouse by not more than six residents as [an HMO]". I shall therefore consider the appeals as relating to use as an HMO by not more than six residents.

Appeal A – Reasons

4. The main issue is whether the Council's refusal to issue an LDC was well founded. The property was originally used as a dwellinghouse defined by Class C3 of the UCO ("a Class C3 dwellinghouse") and the LDC is sought on the basis that a change of use from a Class C dwellinghouse to use as a Class 4 HMO ("a

small HMO”) is permitted development and does not require an express grant of planning permission. The relevant provisions are Article 3 and Schedule 2, Part 3, Class L (“Class L”) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the GPDO”).

5. The Council’s reason for refusing to issue an LDC is that it considers Article 3 and Class L cannot apply because the property is, or has been, occupied by more than 6 people. Use as an HMO by more than 6 residents does not constitute a small HMO and the GPDO does not grant planning permission for the change of use of an HMO used by more than 6 residents to a small HMO.
6. The appeal will therefore turn on whether the appellant can show 2 things on the balance of probability. First, that the property was in use as a small HMO when the application was made and, second, that the previous use had been the original use as a Class C3 dwellinghouse.
7. The Planning Practice Guidance states “In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.”
8. An LDC confirming that the change of use of the property from a dwellinghouse to a small HMO would be lawful was issued in November 2015¹. HMO use was instituted from February 2016, as tenants moved in, and there is no evidence of any use before that, other than the original use as a Class C3 dwellinghouse.
9. A director of the appellant company made a statutory declaration that the property has only been occupied as an HMO by up to 6 people. With one exception² the statutory declaration names all tenants between 4 February 2016, when the first tenancy began, and 30 May 2022, after the application was made, along with the dates of their tenancies. This confirms there were no more than 6 tenants at any time during that period.
10. The Council does not accept that the use as an HMO has been limited to 6 residents. An HMO licence issued in November 2021 sets an occupancy restriction of 2 people for each of the 6 rooms, with an overall maximum for the property of 10 people. However, there is no obligation on a landlord to achieve the maximum occupancy allowed by a licence and it is not alleged that as many as 10 residents ever used the property.
11. Another application for an HMO licence referred to occupancy by 7 people. A copy of that application has not been provided, so it is uncertain when it was made or whether that level of occupancy was stated as existing or proposed. Neither has it been confirmed whether the licence was granted. In any event, the appellant states the reference to 7-person occupancy was an error, that an amendment was made, and that the maximum occupancy remained 6.
12. Although the Council disagrees, it has not identified a 7th resident or presented evidence of use by 7 residents at any time, regardless of whether a licence allowed it. Furthermore, although each of the 6 rooms has a double bed, that does not confirm that any room was used by more than one resident at any

¹ 15/3905, issued 24 November 2015

² The tenancy for room 2 between 8 February and 5 October 2016 is recorded as ‘Housing Enterprise’

time. Occasional and limited overnight stays by a partner, which the appellant accepts may have occurred, do not amount to residency.

Appeal A – Conclusion

13. Without alternative evidence that the property has been used as an HMO by more than 6 residents at any time, there is nothing sufficient to contradict or otherwise make the applicant's version of events less than probable. The appellant has therefore demonstrated, on the balance of probability, that the property was being used as a small HMO when the application was made and that its previous use had been the original use as a Class C dwellinghouse.
14. Accordingly, the change of use of the property to use as a small HMO was permitted by reason of Article 3 and Class L of the GPDO on the date it was instituted. It therefore did not require an express grant of planning permission. The use as a small HMO continued thereafter without significant interruption until the date on which the application was made, and no enforcement action may be taken in respect of it.
15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the use of the property as a small 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 Act.

Appeal B - Reasons

16. As I have found that the use of the property as a small HMO did not require an express grant of planning permission and have decided to allow Appeal A and grant an LDC for that use, I will take no action on Appeal B.

Mark Harbottle

INSPECTOR



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 14 February 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use of the land from a use falling within Class C3 (dwellinghouses) of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (as amended) to a use falling within Class C4 (houses in multiple occupation) of the same Schedule was permitted by reason of Article 3 and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) on the date it was instituted. The use of the land within Class C4 continued thereafter, without significant interruption.

Signed

Mark Harbottle

Inspector

Date: 20 February 2023

Reference: APP/T5150/X/22/3300105

First Schedule

Use of a dwellinghouse by not more than six residents as a house in multiple occupation.

Second Schedule

Land at 96 Village Way, London NW10 0LL

IMPORTANT NOTES – SEE OVER

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 20 February 2023

by Mark Harbottle BSc MRTPI

Land at: 96 Village Way, London NW10 0LL

Reference: APP/T5150/X/22/3300105

Scale: Not to Scale

