



Appeal Decision

Site visit made on 21 February 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 March 2023

Appeal Ref: APP/E5900/X/22/3296170 20 Sextant Avenue, London E14 3DX

- 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 A Brown against the decision of the Council of the London Borough of Tower Hamlets.
 - The application, Ref PA/21/02482, dated 15 November 2021, was refused by notice dated 6 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 house in multiple occupation (HMO), Use Class 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 found to be lawful.

Procedural Matters

2. The site visit was arranged as an accompanied site visit but this was changed to an access required site visit when the Council's representative failed to arrive. There was no objection to this by the appellant and, subsequently, no objection by the Council when notified.
3. The question being asked in any application for a certificate of lawfulness under section 191(1)(a) is whether any existing use of buildings or other land is lawful. That lawfulness is to be determined at the time of the application, which is the date on which it is made. Although the appellant refers to lawfulness before the date of the application and the effect of the Council's Article 4 Direction (the Direction), which came into force on 1 January 2021, it is only possible to determine lawfulness at the date of the application. In this case that date is 15 November 2021.
4. The evidence before the Council at the time of the application was one tenancy agreement dated 9 April 2019 for the period 22 May 2019 until 21 May 2020. Additional tenancy agreements have been submitted with the appeal but the Council have made no comments on them.
5. If only evidence from the time of the application was to be considered as part of the appeal, it denies the purpose of the LDC procedure. This is to arrive at an objective decision based on the best facts and evidence available at the time the decision is taken. In any event, it would always be open to the applicant to

re-apply and it would serve no useful purpose to refuse an LDC on the basis only of the evidence submitted with the application, if subsequent evidence had come to light proving the case on the balance of probability.

Main Issue

6. The main issue is whether the Council's decision was well founded. That turns on two requirements:
 - whether the appellant can show, on the balance of probabilities, that the material change of use to Class C4¹ occurred before the making of the Direction; which removed the permitted development right; and
 - whether the appellant can show that the lawful use sought has continued without any other intervening uses until the date of the application, so as to be immune from enforcement action.
7. Section 191(2) of the 1990 Act, indicates that uses and operational development are lawful at any time if (a) no enforcement action may then be taken in respect of them because, for instance, the time for enforcement action has expired and (b) they do not contravene the requirements of any enforcement notice or breach of condition notice in force. Subsection 191(2)(b) is met here as there is no enforcement notice or breach of condition notice in force. I shall now consider section 191(2)(a).

Reasons

8. The appeal concerns the use of a three storey semi-detached house, which has a kitchen/lounge on the ground floor, together with a toilet, and two bedrooms and a bathroom on both the first and second floors. Each bedroom is laid out in an identical way with a double bed, wardrobe, chest of drawers, desk and internet access.
9. The appellant states he bought the property on 14 September 2020 as an existing HMO business and that it was his intention to continue with the HMO use. Although he submitted evidence to demonstrate this with his application, it was not included with the appeal. I have not asked for a copy of the 2019 tenancy agreement as I believe the omission is not fatal to the appellant's case.
10. He refurbished the property and by 31 December 2020, two of the rooms were already let. Copies of the relevant tenancy agreements show that the occupier of the front bedroom on the second floor signed a tenancy agreement on 17 November 2020 and the occupier of the front bedroom on the first floor signed their agreement on 12 December 2020.
11. In the Interpretation section for Class C4 in the Town and Country Planning (Use Classes) Order 1987 it is stated that the HMO use has the same meaning as in section 254 of the Housing Act 2004. A building is used as an HMO under s254(1) if it meets the "Standard test" under s254(2). This test requires that *two* (my emphasis) or more households *share one or more basic amenities* or that the living accommodation lacks one or more basic facilities.

¹ Class C4 is defined in the Town and Country Planning (Use Classes) Order 1987 as use of a dwellinghouse by not more than six residents as a 'house in multiple occupation'.

12. The Council's email dated 14 December 2021 states that evidence is required to demonstrate that "all the rooms in the property were in use as a HMO on 31st December 2020". However, this is not the case, having regard to the Interpretation set out above. There only needs to be a minimum of two households sharing basic amenities such as a kitchen or a bathroom, which was the case here, for the property to be considered as a C4 HMO. In the absence of any other information to contradict the appellant's case, I therefore find, on the balance of probability, that a material change of use had occurred before the Direction came into force.
13. Furthermore, the appellant's evidence shows that the Class C4 use continued without interruption to the date of the application with three of the tenancy agreements extending beyond the date of the application. I therefore find again, in the absence of any other information to contradict the appellant's case, that on the date of the application the lawful use of the property was, more likely than not, as a Class C4 HMO.

Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a house in multiple occupation, Use Class C4, was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

D Fleming

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 15 November 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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:

On the date on which the application was made the use described in the First Schedule was an established lawful use that had begun as permitted development before the borough wide Article 4 Direction came into force on 1 January 2021. This had the effect of removing permitted development set out in Class L, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Thereafter the use continued without interruption until the date of the application and the use does not contravene the requirements of any enforcement notice in force.

Signed

D Fleming

Inspector

Date 6 March 2023

Reference: APP/E5900/X/22/3296170

First Schedule

House in multiple occupation Use Class C4

Second Schedule

Land at 20 Sextant Avenue, London E14 3DX

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: 6 March 2023

by D Fleming BA (Hons) MRTPI

Land at: 20 Sextant Avenue, London E14 3DX

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Scale: not to scale

