
Appeal Decisions

Site visit made on 29 March 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 April 2023

Appeal Ref: APP/T5150/X/22/3313869 ('Appeal A')

4 Bertie Road, London NW10 2LH

- 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 Pritesh Patel of) Amazing Tiles Ltd against the decision of the Council of the London Borough of Brent.
- The application Ref 22/2784, dated 5 August 2022, was refused by notice dated 4 October 2022.
- The application was made under section 192(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 proposed conversion of dwellinghouse to HMO (C4).

Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Appeal Ref: APP/T5150/X/23/3316167 ('Appeal B')

4 Bertie Road, London NW10 2LH

- 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 Pritesh Patel against the decision of the Council of the London Borough of Brent.
- The application Ref 22/3718, dated 28 October 2022, was refused by notice dated 23 December 2022.
- The application was made under section 192(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 proposed conversion of dwellinghouse to HMO (C4).

Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made against the Council in respect of Appeal A. This application is the subject of a separate Decision.

Preliminary Matter

2. The appeal in Appeal A was purportedly brought by a person who was not the original applicant for the certificate, although he is understood to be a Director of the applicant company, and is the appellant in Appeal B. The Council did not object to the company being substituted as the appellant. That is reflected above, although I refer to the appellant in the singular in this decision.

Main Issues

3. The Council's reason for refusing the application in Appeal B was that an Article 4 Direction had come into force, disapplying permitted development rights otherwise conferred by article 3 of and Class L(b) of Part 3 to Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the 2015 Order'). Its reasons for refusing the application in Appeal A were unilluminating, saying simply that the proposed development does not comply with the requirements of the 2015 Order and is not permitted development.
4. Class L(b) of Part 3, Schedule 2 to the 2015 Order provides a permission for development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order to a use falling within Class C4 (houses in multiple occupation) of that Schedule. It is this right that is claimed in both appeals here.
5. Considering the Council's officer reports and statements, it appears that the issues in dispute are:
 - (i) Whether the property was in a Class C3 dwellinghouse use at the time of each application, meaning that Class L rights were potentially available;
 - (ii) Whether what is proposed in each application amounts in substance to a Class C4 use; and
 - (iii) Whether the Article 4 Direction operates so as to remove permitted development rights to make the change of use.
6. It is appropriate to state at the outset that any certificate granted is likely to be of scant assistance to the appellant. The appellant confirms on Appeal B, in a statement dated December 2022, that the property remained in a Class C3 dwellinghouse use at that point. This was after the Article 4 Direction came into effect, on 1 November 2022.
7. Any certificate granted would relate to lawfulness at the time of the application; in this case either 5 August 2022 or 28 October 2022. It could be certified that a change of use from Class C3 to C4 would have been lawful, by reason of being permitted development, at those times. However the failure to make the change of use before the Article 4 Direction came into effect brings into play the provisions of section 192(4) of the 1990 Act: the lawfulness of any use or operations for which a certificate is in force under the section shall be conclusively presumed *unless* there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.
8. Plainly an Article 4 Direction coming into effect before the change of use is made is suggestive of such a material change in a matter relevant to determining such lawfulness. It is now the case that express planning permission would be required to make the change of use, if a material one, irrespective of the outcome of these appeals or the existence of any certificates relating to dates prior to the Article 4 Direction coming into effect.

Reasons

Use at the time of the applications

9. The officer's reports reveal an extensive planning history of applications to make various extensions or alterations to what was described as a dwellinghouse. Whilst that does not necessarily imply a Class C3 use, there is nothing in that history to suggest anything to the contrary; and in each of the applications under appeal the appellant stated the existing use of the property to be a Class C3 dwellinghouse.
10. The first application was made in August 2022, with the Council visiting the site the following month. They recorded that it would appear that works to demolish the rear wall of the outrigger had commenced; but that this was not indicated on the submitted drawings. As such, the submitted drawings would appear to not accord with what was permitted under application ref: 22/2489 or with what was then on site. Additionally, the existing layout shown on the plans does not accord with either the existing or proposed layouts of previous permissions or consents on the site. The Council found it was unclear whether the existing use was a C3 dwellinghouse or if it was being used as an HMO.
11. The appellant had confirmed that the change of use had not taken place at the time of the application; and this confirmation was repeated in the second application made at the end of October as well as in later appeal statements. I consider that the discrepancies in the submitted plans are insufficient to displace the appellant's declarations in this regard.
12. I have considered in particular the cases of *Impey*¹ and *Basingstoke*² in relation to the proposition that works for the purposes of furnishing or renovating premises in order to facilitate a use may constitute an active commencement of that use and they may have done so in this case. The difference, however, is that here the works were not permitted in the furtherance of a new use but were permitted works to a residential dwellinghouse without any suggestion of that use changing.
13. Although the Council suggest that the works being undertaken did not actually accord with those existing permissions, neither is there any evidence of any HMO tenancy having been in place at the time of the Council's site visit, or at all. As the Court said in *Basingstoke*, 'intention by itself cannot lead to enforcement action'. It appeared at the date of my site visit that the property was empty and undergoing refurbishment works. From the limited description of the visit given by the Council there appears insufficient information to suggest that the Council could have been in a position to positively ascertain that a change of use had already taken place.
14. The submission of plans showing the 'before' and 'after' layout of the property in an application for a lawful development certificate concerning the use of land is not a requirement of the development procedure order. That there were discrepancies between the plans and what was observed on site by the Council is not, on balance, a consideration of sufficient weight to allow me to conclude that the use of the property at the time of either application was not in fact a continued Class C3 use, as the appellant asserts. Therefore I do not consider

¹ *Impey v SSE* (1984) 47 P&CR 157

² *Basingstoke and Deane Borough Council v SSCLG* [2009] EWHC 1012 (Admin)

that the Council's conclusion in this regard in relation to Appeal A was well-founded.

The nature of the use proposed

15. The Council took issue with the proposed use in Appeal A (but not in Appeal B) because it found that some of the six bedrooms could potentially accommodate more than one person. If so used, the use would not fall within Class C4 because that provides for occupation by a maximum of six people.
16. However if the property was put to such a use, by more than six people, then the Council would at that point need to decide whether that use was materially different from its former lawful use. There is no discrepancy of any substance between what is shown on the plans for the proposed use, and the description of it as a Class C4 use. Thus I do not consider that the Council's conclusion in this regard in relation to Appeal A was well-founded.

Application of the Article 4 Direction

17. The Appeal B application form was dated 28 October and it appears the fee was paid a few days later. The Council's notice of refusal refers to the application having been dated 30 October 2022. Therefore, whenever it was that the Council validated the application, it is agreed as having been made prior to the Article 4 Direction coming into effect, on 1 November 2022.
18. Although the Article 4 Direction was in effect at the time of the Council's determination of the Appeal B application, this is not the relevant date for consideration. The relevant time for consideration, as set out in section 192(2) of the 1990 Act, is that when the application was made, and on that date no Article 4 Direction was in effect. Although the section refers to the 'time' of the application, rather than expressly to the date, it goes on to say that any certificate should state the date of the application and I consider these terms synonymous in this context. Thus the 'time' of the application refers to the date upon which it was made, rather than to any time period within which the Council may have determined it. Therefore, permitted development rights applied at the relevant time, and the Council's conclusion in this respect in relation to Appeal B was not well-founded.

Conclusions

19. Although circumstances have since changed, in that an Article 4 Direction disapplying the relevant permitted development rights is now in effect, for the reasons given above I conclude, on the evidence now available, that the Council's refusals to grant certificates of lawful use or development in respect of the use of 4 Bertie Road, London NW10 2LH as a house in multiple occupation (Class C4 of the Use Classes Order) were not well-founded and that the appeals should each succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decisions

Appeal A

20. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to have been lawful at the time of the application.

Appeal B

21. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to have been lawful at the time of the application.

Laura Renaudon

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 5 August 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use from a residential dwellinghouse in Class C3 of the Use Classes Order to a House in Multiple Occupation in Class C4 of that Order would have been permitted development pursuant to article 3 of and to Class L, Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Laura Renaudon

Inspector

Date 14 April 2023

Reference: **APP/T5150/X/22/3313869**

First Schedule

Use as a house in multiple occupation in Class C4 of the Use Classes Order 1987.

Second Schedule

Land at 4 Bertie Road, London NW10 2LH

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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. 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 28 October 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use from a residential dwellinghouse in Class C3 of the Use Classes Order to a House in Multiple Occupation in Class C4 of that Order would have been permitted development pursuant to article 3 of and to Class L, Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Laura Renaudon

Inspector

Date 14 April 2023

Reference: **APP/T5150/X/23/3316167**

First Schedule

Use as a house in multiple occupation in Class C4 of the Use Classes Order 1987.

Second Schedule

Land at 4 Bertie Road, London NW10 2LH

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

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