



Appeal Decision

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 4 May 2023

Appeal Ref: APP/U5930/X/22/3309425

48 Melville Road, Walthamstow, LONDON, E17 6QT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr F Raja against the decision of Waltham Forest London Borough Council.
 - The application ref 212410, dated 23 July 2021, was refused by notice dated 16 August 2022.
 - 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 use as a House in Multiple Occupation (HMO).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form made it clear that a LDC was sought for an *existing* use rather than a *proposed* use (the distinction is important, because it establishes under which section of the Act the application should be determined). However, the wording of the Council's Decision Notice sets out its reasons for refusing a LDC for a *proposed* use. The Council has explained in its Statement of Case that there was an error in the wording of the certificate, and it had in fact determined the application on the basis that an LDC for an existing use was sought. I am satisfied that while the wording of the Decision Notice may have caused some confusion, it has not caused any injustice to the Appellant.
3. The Planning Statement submitted on behalf of the Appellant states that "planning permission should be granted" if it is established that the property was a House in Multiple Occupation ("HMO") on the relevant date. It is important to be clear that an application for an LDC is not the same as an application for planning permission. In an LDC application, planning matters (such as compliance with national and local planning policies) have no relevance. Rather, the application must be decided by determining whether or not the use was lawful on the date that the LDC application was made. If the application succeeds, it results in a Certificate which confirms that the use was lawful on the date of the application: this does not mean that a grant of planning permission has been made for that use.

Main Issue

4. It is common ground that No. 48 Melville Road is a mid-terrace house currently in use as a six-bedroom HMO. The dispute between the parties, and the main issue in this appeal, is whether or not its use as an HMO commenced before

16 September 2014. That was the date on which a Borough-wide Direction¹ came into force, removing the Permitted Development Rights that would otherwise exist for the change of use from a dwellinghouse to an HMO. If use as an HMO did not begin until after that date, it would have required planning permission, and none has been granted. But if the use began before that date no grant of planning permission would have been required, and if the use has since continued (that is, there has been no other subsequent material change of use) then it is lawful.

Reasons

5. The Planning Statement submitted in support of the application states that “the Applicant converted the house into individual room lets since 29 July 2014. Ms Fatima Meznagui moved into Room 4 and has been living there ever since. Heather Barton moved into Room 1 and has been living there ever since”.
6. This contention seems somewhat at odds with the Statutory Declaration made by Ms Barton and submitted by the Appellant, in which she states that she has been living in Room 1 since 21 March 2013, and makes no reference to the alleged conversion to “individual room lets” on 29 July 2014. It is possible that she remained in occupation of Room 1 while the rest of the house was being converted – or was temporarily accommodated elsewhere, and moved back into Room 1 when the conversion was complete - but either way, the Statutory Declaration does not address the important question of when the change of use to an HMO took place. It does not say whether or not the property was already an HMO when Ms Barton moved in, in 2013. It simply states that “The property is a HMO property, there are 6 rooms in the property”. There is no dispute that this is *currently* the case: the question is *when* the house became an HMO.
7. A Statutory Declaration made by Mr Tabraiz Patel, the managing agent of the property since 20 November 2015, has also been submitted by the Appellant. Again, this does not address the question of *when* use as an HMO began: Mr Patel confirms that the property is currently an HMO, but (understandably, since his engagement as managing agent was not until 2015) he does not state whether or not use as an HMO began before 16 September 2014.
8. The Appellant has provided other documentary evidence to support the request for a LDC. Many of these documents – such as the HMO Licence dated 10 March 2020, and various electrical installation, energy performance and gas safety reports dated between 2019 and 2022 - simply confirm the undisputed fact that in recent years, the property has been in use as a six-bedroom HMO. There is a set of twelve-month Tenancy Agreements for each year from 2015 to 2021 (with the exception of 2019), made between the Appellant and the property management company of which Mr Patel was a Director (“Roomcity Ltd” from 2015 until 2017; “Postcodes Property Ltd” thereafter). These were for the whole of No. 48 Melville Road: they confirm Mr Patel’s involvement with the property since November 2015, but do not provide any further information about the occupation of the property.
9. The Appellant has provided copies of Assured Shorthold Tenancy Agreements, entered into by the property management company (acting as landlord) and

¹ Under Article 4(1) of the Town and Country Planning (General Permitted Development)(England) Order 1995 then in force

the renters of rooms at the property. However, the only one of the AST Agreements provided which pre-dates 16 September 2014 is that of Ms Meznagui, for Room 3, with a commencement date of 29 July 2014. All of the others – including Ms Barton’s for Room 1 – have commencement dates of 2017 or later.

10. The other piece of documentary evidence provided by the Appellant is two “Tenancy Balance Statements” each dated 23 July 2021, in respect of Ms Meznagui’s occupation of “Room 4” and Ms Barton’s occupation of Room 1. The Statements itemise the weekly rent due from, and paid by, those two tenants from 29 July 2014 and 21 March 2013 respectively.
11. Drawing all of this together, I find that there is sufficient evidence to confirm that two tenants were living at the property prior to 16 September 2014. The AST and Tenancy Balance Statement for Ms Meznagui indicate that she occupied a room (whether that was room 3 or room 4 is unclear, but of little consequence) from 29 July 2014 onwards. There is no AST dated earlier than June 2017 for Ms Barton, but she says in her Statutory Declaration that she began living in Room 1 on 21 March 2013 and I accept that to be the case; the Tenancy Balance Statement for Room 1 records weekly rent paid from 21 March 2013 onwards, which increased in amount when a new rental agreement was reached in June 2017.
12. However, not only is there no evidence that any other tenants were living at the property prior to 2017, there is no evidence as to the basis on which the two tenants who have been shown to be there (Ms Barton and Ms Meznagui) occupied the premises. This is important, because in order to establish that the property was being used as an HMO it would be necessary for the Appellant to demonstrate that the relevant criteria were met. No evidence has been provided as to whether any of the accommodation within the premises at that time consisted of self-contained flats; whether the tenants formed a single household or lived separately; or the extent to which the tenants shared basic amenities (such as washing and cooking facilities).²
13. In the absence of this information it is not possible to determine how the property was occupied prior to 16 September 2014. Put simply, the Appellant has not provided sufficient evidence to demonstrate that, on the balance of probabilities, the use of the premises changed from a dwellinghouse to use as an HMO **before** 16 September 2014.

Conclusion

14. For the reasons given above I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of use as an 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.

Jessica Graham

INSPECTOR

² The Town and Country Planning (Use Classes) Order 1987 (in the version applicable in July-September 2014) specifies that “HMO” has the same meaning as in s.254 of the Housing Act 2004. S.254(2) of the Housing Act 2004 sets out the six criteria that form the “standard test” for an HMO.