



Appeal Decision

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10 May 2023

Appeal Ref: APP/J3015/X/22/3308952

25 Broadgate, Beeston, Nottingham NG9 2HD

- 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 S Atwal against the decision of Broxtowe Borough Council.
- The application Ref 22/00227/CLUP, dated 11 March 2022, was refused by notice dated 25 April 2022.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended ('the 1990 Act').
- The use for which a certificate of lawful use or development is sought is change of use from dwelling house (Class C3) to house in multiple occupation (Class C4).

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

Preliminary Matter

1. On reviewing the appeal documents it appeared to me that the appeal was capable of determination without a site observation. The parties' views were sought and there was no dissent. Accordingly, I have not visited the site.

Main Issue

2. The main issue arising in the appeal is whether, on 11 March 2022, it would have been lawful to have changed the use of the subject property from a dwellinghouse in Class C3 of the Schedule to the Use Classes Order to a small house in multiple occupation falling within Class C4 of that same Order.

Reasons

3. Permission to change the use of houses in this way is (where the change is material, and permission is required) generally conferred by article 3 of and Class L of Part 3 to Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 ('the 2015 Order'). Such permitted development rights may be withdrawn, including by what are known as Article 4 Directions made by the local planning authority.
4. Such Directions are subject to confirmation. I have not been supplied with a copy of any sealed confirmed Direction in this case, but I have seen a made Direction dated 15 January 2021 and a copy of a notice of confirmation stating that the Direction was confirmed on 25 March 2021, with it taking effect from 26 March 2022.

5. The application here was made on 11 March 2022, some two weeks before any Direction may have taken effect. The Council's view is that, with the imminent coming into effect of the Direction, the proposed change of use was not lawful at the time of the application because they were not satisfied of any realistic prospect of the change of use actually happening before the Direction came into force. The appellant confirms that the property remained in a Class C3 use on 26 March 2022.
6. The relevant date for assessment as set out in section 192(2) of the 1990 Act is when the application is made: *if on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.* Any such certificate shall specify the date of the application.
7. Here, the Council have not assessed the materiality of the proposed change; and have introduced an additional hurdle of requiring the appellant to have demonstrated that the property actually would be occupied within Class C4 by the time the Direction came into effect. This is an unwarranted gloss on the terms of the 1990 Act, which requires the local planning authority to assess only whether the proposed change of use, if made at the time of the application, would have been lawful.
8. As, on the date of the application (and on its later validation date of 16 March 2022) no Article 4 Direction was in force, the change of use proposed by the appellant would (whether or not a material change requiring permission) have been lawful. I am not informed about any planning conditions applying to the property that may remove any such permitted development rights; the Council have brought none to my attention. In any event section 193(5) provides that a certificate under section 191 or 192 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.
9. It therefore follows that a certificate will be granted.
10. However, this may not assist the appellant. The appellant has confirmed that no change of use had taken place before the Direction came into force, and the question arising on this appeal does not involve determining whether such a change of use would, if made now, be lawful. Section 192(4) of the 1990 Act provides that the lawfulness of any use for which a certificate is in force shall be conclusively presumed, but only where there is no material change, before the use is instituted, in any of the matters relevant to determining such lawfulness. Plainly, the coming into force of an Article 4 Direction restricting the application of the particular permitted development rights relied upon is a matter potentially relevant to determining such lawfulness.

Conclusion

11. 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 change of use from dwelling house (Class C3) to house in multiple occupation (Class C4) at 25 Broadgate, Beeston, 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.

Formal Decision

12. 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 11 March 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:

Planning permission for the change of use, if required, was conferred by article 3 and Class L, Part 3 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Laura Renaudon

Inspector

Date: 10 May 2023

Reference: **APP/J3015/X/22/3308952**

First Schedule

Change of use from dwelling house (Class C3) to house in multiple occupation (Class C4)

Second Schedule

Land at 25 Broadgate, Beeston, Nottingham NG9 2HD

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.