

Appeal Decision

Site visit made on 9 November 2022

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2023

Appeal Ref: APP/T5150/X/22/3296123

23 Chestnut Grove, Wembley HA0 2LX

- 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 Gautam Bose against the decision of the Council of the London Borough of Brent.
 - The application Ref 21/4198, dated 9 November 2021, was refused by notice dated 7 January 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 the proposed change of use from dwelling (C3) to small HMO for six persons (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 proposed use which is found to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a certificate of lawfulness was well-founded. This turns on whether, at the time of the application, the proposed use would have been permitted development, having regard to the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

3. The appeal property is one of a pair of semi-detached dwellings at 23 Chestnut Grove. The appellant seeks to demonstrate that, at the time of application, the lawful existing use of the property was that of a single dwelling and therefore its change to a House of Multiple Occupation (HMO) for up to six people would have been permitted development.
4. Section 192(2) of the Town and Country Planning Act 1990 (the 1990 Act) indicates that if, on an application under that 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 shall refuse the application.
5. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal. In this respect, the

burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made, that being 9 November 2021.

6. Schedule 2, Part 3, Class L of the GPDO states that 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 is permitted development.
7. The appellant's evidence suggests that prior to December 2020 the property was in use as a single dwelling. This is supported by an appeal decision¹ that granted a lawful development certificate for dormer extensions. That appeal established that the property was in use as a single dwellinghouse on 28 January 2020 and that there had been a material change of use of the property to flats by mid-December 2020. Nevertheless, at the time of the Inspector's visit in March 2022, they note that there was nothing in the internal or external layout to suggest that the property was used other than as a single dwelling. By this time the use of the ground floor flat had ceased, and the internal and external subdivisions had been removed.
8. Looking at the Council's chronology of events, I note that Council Officers visited the property on 8 October 2021 and found that the doors separating the two flats had been removed, but that other partitions had not, and that the property was still in use as two flats. However, removal of the main internal doors that previously subdivided the property into two flats would suggest that the property had, in practical terms, reverted back to a single unit of accommodation. Furthermore, the Council has offered no evidence to support its claim that the property was still in use as flats at the time of its Officers visit. Prior to its refusal of the LDC, on 7 January 2022, the Council acknowledges that recent works had been carried out to revert the property back to a single dwellinghouse.
9. There is no evidence to demonstrate that the change of use to flats was ever lawful. In fact, the planning history for the site shows that an application for retrospective planning permission for the conversion of the property from a single dwelling into two self-contained flats including rear terrace, was refused on 17 May 2021. Nevertheless, despite a period of unauthorised use as flats, the lawful use of the property is that of a single dwellinghouse. Therefore, taking the principle set out in s57(4) of the 1990 Act, it is possible for the property to revert back to its lawful use prior to the unauthorised use taking place, and without the need for planning permission.
10. The Council has raised concerns about the potential occupancy levels of the proposed HMO. However, the potential level of occupation does not bear on the question of the lawfulness of the proposed use.
11. Drawing all these considerations together, I am satisfied that the appellant has provided sufficient evidence to demonstrate that, on the balance of probabilities, at the time of the LDC application, the property was in lawful use as a single dwelling. Consequently, the proposed change of use would have been permitted development, having regard to the provision of the GPDO.

¹ Appeal Ref. APP/T5150/X/21/3283990

Conclusion

12. 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 (C3) to small HMO for six persons (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.

J M Tweddle

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 9 November 2021 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, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The lawful use of the property is a dwellinghouse and therefore its change of use to a House of Multiple Occupation for up to six persons would have been permitted development pursuant to Article 3 and Class L, Part 3 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

J M Tweddle

Inspector

Date: 15 May 2023

Reference: APP/T5150/X/22/3296123

First Schedule

Change of use from dwelling (C3) to small HMO for six persons (C4).

Second Schedule

Land at 23 Chestnut Grove, Wembley HA0 2LX

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 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 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.



Plan

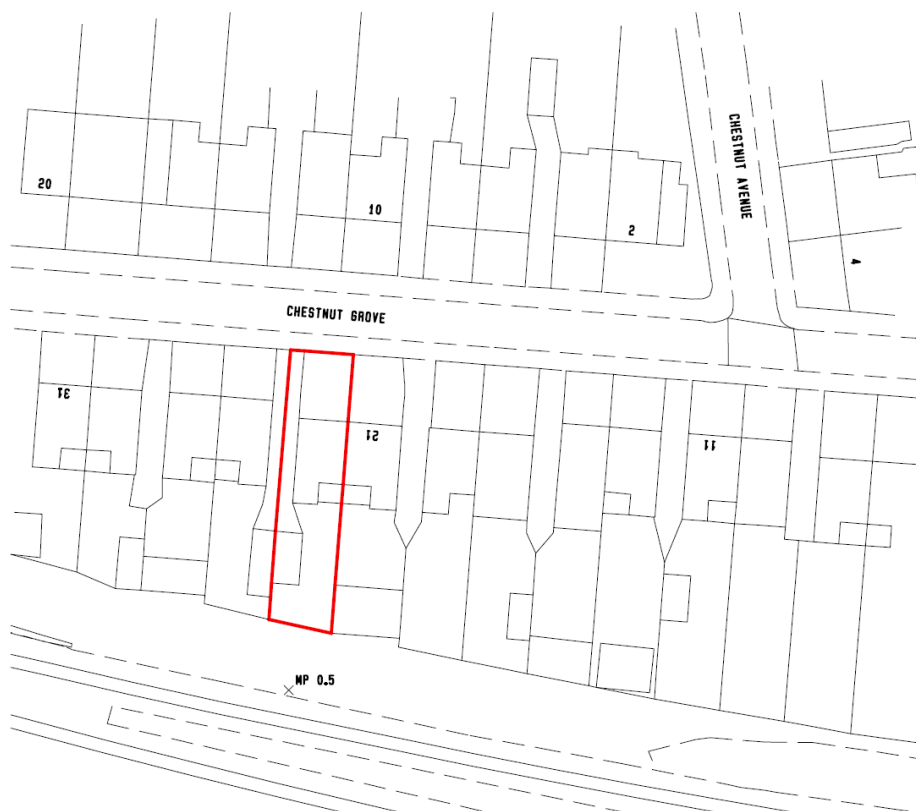
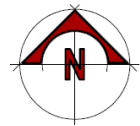
This is the plan referred to in the Lawful Development Certificate dated: 15 May 2023

by **J M Tweddle BSc(Hons) MSc(Dist) MRTPI**

Land at: 23 Chestnut Grove, Wembley HA0 2LX

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Scale: Not to scale



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