



Appeal Decision

Site visit made on 6 July 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2023

Appeal Ref: APP/C5690/X/22/3296973

32 Evelyn Street, London SE8 5DG

- 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 Gordon Lim against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/22/125178, dated 20 January 2022, was refused by notice dated 18 March 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 from occupation of six persons to eight person HMO.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development for the proposal was well-founded.

Reasons

3. The appeal relates to a three storey, mid terraced, property situated on a main road. It is currently used as a Class C4 House in Multiple Occupation (HMO) and the Council granted an LDC on 17 January 2022 confirming that this use was lawful. The appellant proposes renting out two of the largest bedrooms in the property as double rooms, as opposed to single rooms, to increase the overall number of occupiers from 6 to 8. It is submitted that whilst this would remove the property from the Class C4 use into a *sui generis* use, it would be a non material change of use not amounting to development and consequently would be lawful.
4. It has been held in case law that a change of use can only be material by bringing about a definable change in the character of the main use of the land. In other words, there needs to be some significant difference in the character of the activities from what has gone on previously. On that basis, some of the appellant's submissions are not helpful as they do not address this point.
5. The character of the area around the appeal site is residential and, in the main, this appears to be purpose-built flats on the opposite side of the road from the appeal site and Victorian housing stock alongside the appeal site and to the

rear of the site. It appears some of the older housing stock has been converted into flats, having regard to the number of doorbells to the side of the front doors, the numbering of the properties or the addresses painted on the waste bins that I saw. It may also be that some of the houses in the area are also in use as small HMOs but I have no information from either party to confirm this but this is referred to by third parties.

6. However, it appears that at least one of the properties adjoining the appeal site is in use as a Class C3 dwelling house, with main rooms adjoining those at the appeal site, as opposed to being 'halls adjoining'. It could be argued that the comings and goings of an additional two people would go unnoticed on a busy main road but the use of the property would also extend to the activities that take place inside and in the rear garden.
7. The appellant assumes that the occupiers of the shared bedrooms would share the same lifestyles but that has not been demonstrated. Future occupiers could be on different timetables and employees may work shifts or be on zero-hour contracts for example, leading to the kitchen being used more intensively for cooking and washing clothes over a longer period. Even if this were not the case, the existing kitchen layout only has one sink, one four ring hob, one oven and one microwave which means it would be in use over a longer period by 8 people, as opposed to 6 people. In my view this would result in a change in the character of the use.
8. There is a small lounge at the front of the property which could also be used more intensively leading to more activity noticeable through the party wall. However, it is more likely than not, given the size of the lounge and the existence of a single, two-seater sofa that residents would use their bedrooms as lounges. This appears to be the existing manner in which the current bedrooms are used with easy chairs and TVs installed.
9. An increase in occupiers could also lead to more visitors to the property such as social callers, parcel and food deliveries. As Evelyn Street is a red route at this point, it is likely that delivery drivers would park on surrounding roads and third parties have expressed concerns over existing parking pressures. Whilst they submit more residents would lead to additional demand for on-street parking in the area, in my view I consider this would be unlikely given the nature of the use but there is the potential for a more intensive use of the rear garden, which is used to store bicycles.
10. In addition, the increase in numbers is likely to manifest itself in the creation of more waste which could potentially necessitate the provision of an additional waste bin. This would also be noticeable in an area of small front gardens where I saw that the storage of waste bins often spills out onto the pavement.
11. The appellant refers to three other appeal decisions¹ to support his case all of which deal with varying increases in the number of occupiers. None are directly comparable to the appeal before me but I have taken them into account. However, they rely on their own particular circumstances and the evidence before those Inspectors, as such, they have not directed my conclusions.

¹ APP/Y1110/X/15/3132534, APP/D1780/X/19/3241496 and APP/D1780/X/20/3245566

Conclusion

12. Having regard to the above and to all other matters raised, I find, as a matter of fact and degree, that the proposed use would result in a significant difference from the character of the existing use. This would amount to development requiring planning permission. I therefore conclude that the Council's decision to refuse to issue an LDC was well-founded and the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

D Fleming

INSPECTOR