



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Appeal Ref: APP/P5870/X/22/3313405

2 Wood Street, Mitcham Junction, Sutton CR4 4JS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 Samuel Spitzer, Sunshine UK Estates Ltd against the decision of the Council of the London Borough of Sutton (the LPA).
 - The application Ref DM2022/01762, dated 22 September 2022, was refused by notice dated 12 December 2022.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is erection of a rear and rear/side ground floor extensions; a hip-to-gable; rear roof dormer; front rooflights; and rearrangement of the 8 room HMO internal layout.
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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 operation which is considered to be lawful.

Application for Costs

2. An application for costs was made by Mr Samuel Spitzer, Sunshine UK Estates Ltd against the Council of the London Borough of Sutton. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the LPA's decision to refuse the LDC application was well-founded.

Reasons

4. S191(2) of the Act states that operations are lawful at any time if: (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
5. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for the classes of development described as permitted development in Schedule 2 of the Order.

6. Part 1 of Schedule 2 relates to development within the curtilage of a dwellinghouse. Class A of Part 1 describes the enlargement, improvement or other alteration of a dwellinghouse as permitted development. Class B of Part 1 describes the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Class C of Part 1 states that any other alteration to the roof of a dwellinghouse is permitted development. The permitted development right is subject to the limitations set out in each class.
7. The appeal property comprises a terraced property in use as an 8 person house in multiple occupation (HMO). The lawful use of the property as an 8 person HMO was established with the issue of an LDC in 2019. There is no evidence of there being any change in circumstances sufficient to result in the loss of the lawful use rights accrued.
8. The main issue between the parties is that the LPA considers the property does not constitute a dwellinghouse and therefore the proposed development does not fall to be considered as permitted development under classes A and B of Part 1, Schedule 2 of the GPDO.
9. The term 'dwellinghouse' is not defined in the Act. The definition within the GPDO does not define what is a dwellinghouse, only that flats are not dwellinghouses for the purposes of the Order. It was held in *Gravesham*¹, that the distinctive characteristic of a dwellinghouse is its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
10. The appellant has cited Planning Inspectorate advice note: Houses in Multiple Occupation and Permitted Development Rights, 15 January 2014. The advice note states that the test for whether a property is eligible to use the permitted development right (under Part 1) is whether it can be considered a "dwellinghouse" within the context of the GPDO and that will depend on the facts of the case.
11. The appellant has also cited the recent High Court case of *Brent*². In that case the court held its conclusions were consistent with the advice notice that the *Gravesham* test must be applied to any HMO to determine whether it is in fact a dwellinghouse.
12. The LPA argue that the *Brent* judgement is exclusively deriving from C4 use, not sui generis HMOs as it the case here. However, the court plainly held that its conclusions were consistent with the Planning Inspectorate advice notice that the *Gravesham* test must be applied to any HMO to determine whether it is in fact a dwellinghouse.
13. The LPA says that only dwellinghouses that are C3/C4 have permitted development rights. The LPA states that the lawful larger HMO is Sui Generis, and not C3/C4 and therefore does not have permitted development rights. However, that is contrary to what the *Brent* judgement says, and the LPA has cited no other authorities which support its view.
14. The building contains 8 bedrooms, a shared kitchen and a shared bathroom. The appellant indicates that those provisions contain the facilities required for day-to-day existence. I have no contrary evidence from the LPA to make the appellant's submissions less than probable. There is no shared communal space

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

² *London Borough of Brent v SSLHC and Rothchild* [2022] EWHC 2051 (Admin)

internally within the property, although I note the rooms are of reasonable size to accommodate some form of communal living. Given the shared facilities, it seems to me that the rooms individually do not afford occupiers the necessary facilities for private day-to-day existence. In contrast, it seems to me that the property as a whole, in use as an 8 person HMO, affords those who live within it the facilities required for day-to-day private domestic existence. As a result, I find, as a matter of fact and degree, that the property is a dwellinghouse for the purpose of the GPDO.

15. The LPA does not dispute that any aspect of the development would fail to meet the limitations under Class A, B or C of Part 1 of Schedule 2 of the GPDO. I have assessed the development against the limitations under all three classes and I am satisfied that none of the limitations would apply to the development before me. As a result, I conclude that the proposed rear and rear/side ground floor extensions would be an enlargement of a dwellinghouse and thus permitted development under Class A of Part 1 of Schedule 2 of the GPDO. Moreover, the hip-to-gable and rear roof dormer would be additions to the roof of a dwellinghouse and thus permitted development under Class B of Part 1 of Schedule 2 of the GPDO. Finally, I find that the proposed front rooflights would be permitted development under Class C of Part 1 of Schedule 2 of the GPDO. Consequently, I find that the development as a whole would have been granted planning permission by Article 3(1) of the GPDO.
16. In addition, the rearrangement of the internal layout of the building would be exempted from development under S55(2) of the Act as it amounts to the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building. Furthermore, there is no evidence before me that any of the proposed operations would contravene the requirements of any enforcement notice then in force.
17. I conclude, therefore, that at the date the LDC application was made, the erection of a rear and rear/side ground floor extensions; a hip-to-gable; rear roof dormer; front rooflights and rearrangement of the 8 room HMO internal layout would have been lawful within the meaning of S191(2) of the Act.

Conclusions

18. 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 the erection of a rear and rear/side ground floor extensions; a hip-to-gable; rear roof dormer; front rooflights; and rearrangement of the 8 room HMO internal layout 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 Whitfield

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 22 September 2022 the operations 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development, insofar as it relates to the erection of a rear and rear/side ground floor extensions; a hip-to-gable; rear roof dormer and front rooflights would have been granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015.

The proposed development, insofar as it relates to the rearrangement of the 8 room HMO internal layout, would not have constituted development under S55 of the Act for which planning permission is required.

Signed

J Whitfield

Inspector

Date 14 August 2023

Reference: APP/P5870/X/22/3313405

First Schedule

The erection of a rear and rear/side ground floor extensions; a hip-to-gable; rear roof dormer; front rooflights; and rearrangement of the 8 room HMO internal layout.

Second Schedule

Land at 2 Wood Street, Mitcham Junction, Sutton CR4 4JS.

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 and identified on the attached plan. 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 14 August 2023

by J Whitfield BA(Hons) DipTP MRTPI

Land at: 2 Wood Street, Mitcham Junction, Sutton CR4 4JS

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Scale: Not to scale

