
Appeal Decision

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 3 October 2023

Appeal Ref: APP/C2741/X/23/3323894
3 Stanley Street, York YO31 8NW

- 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 John Williamson against the decision of City of York Council.
- The application Ref 23/00375/CLU, dated 4 March 2023, was refused by notice dated 4 May 2023.
- 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 described as a small house in multiple occupation.

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

Preliminary matters

1. Although described slightly differently in both the appellant's application form and in the First Schedule to the Council's notice of refusal, it is clear from the parties' cases that the applicable question is whether the subject dwellinghouse is in a lawful use falling within Class C4 of the Use Classes Order; that is, use by not more than six residents as a house in multiple occupation ('HMO').
2. I indicated to the parties that I considered the appeal capable of determination on the papers without necessitating a site visit; upon receiving no objection I have proceeded accordingly.

Main Issue

3. The main issue in the appeal is whether the Council's decision to refuse to issue a certificate of lawfulness was well-founded.

Reasons

4. The appellant's case is that the property was purchased in 2003 as a buy-to-let, and has been let to four working people since that time as an HMO. A personal property move by the appellant in around 2018 resulted in a clear-out of paperwork, meaning that copies of earlier tenancy agreements were discarded. Tenancy agreements since then have been provided, showing that the property's four rooms have been let on separate agreements. Copies of bank statements demonstrating the receipt of rental income, some but not all directly attributable to the property, have also been provided. The appellant has also submitted Land Registry information to the effect that he owns no

- other rental properties, thus inviting me to infer that the rental payments must have been attributable to this one.
5. The Council consider that insufficiently precise and unambiguous evidence has been provided in order to demonstrate that the property has been occupied continuously by three or more unrelated tenants over a period of at least ten years prior to the submission of the application in February 2023. In particular, the bank statements do not directly demonstrate that rental payments were all attributable to this property. The period from June 2013 to January 2014 evidenced payments from only two tenants.
 6. The appellant's case is that during this period, from June 2013 to January 2014, two of the occupants of the property were his own children, from whom no rental payments were received. He also supplies copy correspondence with a planning enforcement officer at the Council concluding that the subject property was a 'small HMO' prior to 2012, apparently after an investigation of the electoral register at the relevant time.
 7. Prior to April 2010, there was no separate Use Class concerning small HMOs. In April 2010, the Use Classes Order was amended to introduce a definition of small-scale houses in multiple occupation into the planning system, resulting in classes C3 (dwellinghouses) and C4 (houses in multiple occupation).
 8. The General Permitted Development Order also underwent consequential amendments in April and October 2010, respectively granting permission for changes of use between classes C3 and C4.
 9. It appears that in 2012, the Council made an Article 4 Direction to remove those permitted development rights that applied to the land in which the subject property is situated. Any change between these classes (or at least from C3 to C4) would, if material, now require planning permission.
 10. The Council has considered the application on the basis of the appellant having to demonstrate, on the balance of probabilities, that the property had been in a Class C4 use for ten years prior to the application being made. This would require, at any point during that ten years, the Council having been able to enforce against the use. The Council points out that the apparent occupation of the property by only two unrelated people for a six month period in 2013 would break the necessary continuity of the use over that ten year period: during that period, the Council could not have enforced against a Class C4 use because, if occupied by only two people, there was no Class C4 use taking place (by reason of the definition applied by the Housing Act 2004).
 11. If this approach is taken to establishing the lawfulness of the use, I should need to decide whether to accept the appellant's account of his two children having lived there at the relevant time. No evidence has been received from either of those children themselves; however, the appellant produces a sworn affidavit to the effect that they were 'free of payment tenants' during this period. No contradictory evidence is provided. Although this affidavit was not available to the Council when determining the application, I am bound to have regard to it. On this approach, and accepting too the appellant's explanation of the rental payments and his sworn statement to the effect of having owned no other rental properties since 2003, I accept on the balance of probability that the property has been in a continuous Class C4 use over the relevant ten year period.

12. However, the appellant's primary case is that the property has been in use as a small HMO since it was purchased in 2003. If this is correct, the approach to any gap in tenancies in 2013 is not to ask whether the use was continuous, such that it could have been the subject of enforcement proceedings, but whether any gap in tenancies would have amounted to the abandonment of an already lawful Class C4 use or a material change of use to Class C3.
13. On the evidence provided I have no good reason to disbelieve the appellant's case that the property has been in use as a small HMO since 2003. That being so, it would necessarily have lawfully fallen into use Class C4 upon the relevant changes to the Use Classes Order in April 2010. The Council's enforcement officer had concluded that this use class applied to the subject property prior to the introduction of the Article 4 Direction in 2012. The Council have not contended that any gap in tenancies in 2013 would have amounted to the abandonment of that lawful use or constituted a material change of use to C3.
14. I accept the appellant's case that there was no significant gap in tenancies in 2013, and that the property has been continuously occupied by at least three unrelated tenants over the period since its purchase. Therefore, whichever approach is taken to establishing the lawfulness of its use in Class C4, I am satisfied, on the balance of probabilities, that this was the property's lawful use at the date of the present application.

Conclusion

15. 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 use of 3 Stanley Street, York, as a house in multiple occupation falling within Use Class C4 of the 1987 Use Classes Order 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

16. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Laura Renaudon

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 4 March 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The property was in a lawful Class C4 use prior to the coming into force of an Article 4 Direction in 2012, without material change since. It had also been in a continuous Class C4 use for ten years prior to the date of the application.

Signed

Laura Renaudon
Inspector

Date 3 October 2023

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First Schedule

Use of the dwellinghouse by not more than six residents as a house in multiple occupation, falling within Use Class C4 of the Town and Country Planning (Use Classes) Order 1987

Second Schedule

Land at 3 Stanley Street, York YO31 8NW

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 3 October 2023

by **Laura Renaudon LLM LARTPI Solicitor**

Land at: 3 Stanley Street, York YO31 8NW

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Scale: do not scale

