

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 9th January 2024

Appeal Ref: APP/E5900/X/23/3324690

3 Landons Close, Tower Hamlets, London E14 9QQ

- 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 Miss Ismat Zaheer against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/23/00509, dated 9 March 2023, was refused by notice dated 15 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 HMO (C4).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. LDC appeals are only concerned with lawfulness, and not with arguments made concerning the merits of a use or development. Accordingly, I have not considered such arguments made in the appeal.
3. Due to the nature of the appeal, which turns on evidence as to the historic use of the property, it was not necessary for me to undertake a site visit to determine it.

Main Issue

4. The main issue in the appeal is whether or not the Council's decision to refuse the LDC application was well-founded.

Reasons

5. The Town and Country Planning (Use Classes) Order 1987 as amended (UCO) defines Class C4 as use of a dwellinghouse by not more than 6 residents as a "house in multiple occupation" (HMO).
6. The appellant has provided tenancy agreements starting from late February/early March 2023 (just before the application for the LDC) which appear to show C4 use from those dates being, as they would seem, agreements separately relating to occupancy of 5 different rooms within an HMO.
7. However, there is also evidence that the property was in use as a single dwellinghouse (Class C3 of the UCO) in 2022. An application was made for a certificate of lawfulness in respect of a proposed conversion of the garage into a habitable room (PA/22/02615). It was made by the appellant (and signed by

the same agent as in the appeal before me) on 12 December 2022, having ticked the declaration of truth and accuracy the form contained. Therefore, I give considerable weight to the fact that it was stated on that form that the "existing or last use" was "C3 – Dwellinghouses". I also note, and place significant weight upon the fact, that a planning application was made the same year to change the use of the property from C3 to C4 (PA/22/01503; refused by the Council on 3 November 2022). I find therefore, as a matter of fact, that the appeal property was in C3 use at the time these 2022 applications were made.

8. C3 and C4 uses are, by reason of the character of those uses and their impacts, materially different. Accordingly, the move from the former to the latter in this case represented a material change of use which did not benefit from planning permission. Nor had C4 use acquired immunity by virtue of time on the date of the LDC application. Therefore, the C4 use at the time of the application for the LDC was not lawful.
9. Further, while the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) ordinarily affords general planning permission for change of use of a building from C3 to C4 use¹, those permitted development rights ceased to exist from 1 January 2021 when the Council introduced an Article 4 Direction under that Order. The appellant has provided tenancy agreements relating to the lease of the property as a whole to a group of individuals from (a) 4 November 2020 to 3 November 2021, and from (b) 4 November 2020 to 3 November 2022 but they do not sufficiently evidence C4 use on the date of the Article 4 Direction introduction - there is nothing I have seen to demonstrate that the people concerned did not constitute a single household occupying the dwelling. In any case, even were the property in use as C4 on 1 January 2021 (which I have not found), the C3 use I have found to have existed in 2022 would have meant there was no right under the GPDO to then change use to C4.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of HMO (C4) use was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andrew Walker

INSPECTOR

¹ Article 3(1), Schedule 2, Part 3, Class L.