



Appeal Decision

Site visit made on 11 December 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Appeal Ref: APP/E5900/X/21/3286117

138 Bow Common Lane, Bow, London E3 4BH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by William Ei Tian Ting against the decision of London Borough of Tower Hamlets.
 - The application ref PA/21/01371, dated 16 June 2021, was refused by notice dated 26 July 2021.
 - 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 "C4 - small HMO".
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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 existing use as "C4 - small HMO", which is found to be lawful.

Preliminary Matters

2. The Council was not present at the site at the arranged time for my visit. I explained to the appellant that I could not undertake an internal inspection of the building with only them in attendance. After the aborted site visit, I reviewed the written submissions again and decided that I could proceed to determine the case on the basis of the documents. Both main parties were written to, to ask for their views on that matter. The appellant agreed and no response was received from the Council. I have to consider what were the circumstances at the date of the application and as such, the site visit was not critical. The evidence submitted is sufficient for me to reach a determination.
3. There was no clear description of what has been applied for on the application forms which also appear to have referred to the number of people resident and their names which are inconsistent with the submitted evidence. I refer to this again, below. The Council's description in the second schedule on their decision notice is "Application for certificate of Lawfulness in respect of the existing use of the dwelling from C3 (residential) to C4 (small HMO)", with 'HMO' meaning 'House in Multiple Occupation'. On the appeal form the existing use, which is of most relevance, is described as "C4 - Small HMO" which is consistent with how the Council have described the application and I have therefore used that above and elsewhere.

Main Issue

4. The main issue is whether the Council's decision was well founded. The onus is upon the appellant to demonstrate that the use applied for is lawful on the balance of probabilities. In assessing that, it is necessary to consider the legal background. The starting point for that is that s191(2) of the Act states that for its purposes, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them and they do not constitute a contravention of any of the requirements of an enforcement notice then in force. The Council's questionnaire has confirmed that there was no enforcement notice in force at the date of the application.
5. The Use Classes Order¹ (UCO) classifies uses of buildings and land. Small HMOs are defined within Schedule 1, Part 3, Class C4 of the UCO as the use of a dwellinghouse by not more than 6 residents as a "house in multiple occupation" and are generally therefore known as 'small' HMOs. Class C3 of the same part of the UCO relates to "dwellinghouses used as sole or main residences" and goes on to explain that, amongst other things, this includes occupation by single people and people forming a single household, a single household being defined in s258 of the Housing Act 2004 (the Housing Act).
6. In addition, the General Permitted Development Order² (GPDO) at Article 3 grants planning permission (known as 'permitted development' rights) for various classes of development. Some changes of use between UCO classes as described in Schedule 2, Part 2, Class L of the GPDO, are permitted development. That includes the change of use of a building from a use falling within Class C3(dwellinghouses) to a use falling within Class C4(houses in multiple occupation). There is normally an interchangeable permitted development right to move between classes C3 and C4 of Part 3 of the UCO.
7. Article 4 of the GPDO however, provides for procedures to restrict permitted development rights. These are often referred to therefore as "Article 4 directions". In this case, the Council states, and the appellant does not dispute, that an Article 4 direction came into force on 1 January 2021 removing the permitted development right to change between Class C3 and Class C4. I requested a copy of that order but have not been provided with it. However, because there is no dispute about that matter, I can continue to determine this appeal.
8. The key matters to consider in assessing the main issue are therefore: whether at the date of the application there was a small HMO; if so whether that had existed since before the Article 4 direction came into force on 1 January 2021; and if so, whether it was a change of use constituting permitted development.

Reasons

9. The floorplan drawing submitted with the application does not provide labels to explain what each room within the property was used for. On its own, this is not therefore a precise indication of how the building was being occupied. However, it states that the floorplan was the existing and pre-existing situation. Shown on that plan with symbols are a kitchen and a bathroom with WC. In addition, there are 3 rooms at first floor level, 2 further rooms at ground floor level and a basement room. A further plan has been submitted

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

² The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

which shows some labels for each room. It appears that this includes up to 4 potential bedrooms whilst still allowing for shared space in addition to the kitchen. There is no dispute by the Council that there are facilities to enable occupation as a single dwellinghouse and the submitted, scaled plan in my view shows that.

10. The application form includes names which are not consistent with other evidence. This seems to be erroneous because of the substantial amount of documentation that has been provided which is consistent, thus enabling me to build up a picture of regarding the occupancy of the appeal site over the relevant time.
11. Details are provided including an assured shorthold tenancy agreement dated 17 August 2016 and subsequent re-assignments. The original document shows 4 individuals had signed that document. A certificate of tenancy deposit protection confirms the same individuals had collectively paid the deposit on the same day. There is no suggestion by the Council that these individuals were not in occupation or that they were occupying the property as a single household as defined in s258 of the Housing Act. It would seem unusual for individuals, if living as a single household, to each be a party to a tenancy agreement. They all also have different surnames which, in itself, is not a definitive indication that they are not a single household. However, the re-assignments to the tenancy agreement indicate that the occupants changed periodically which also helps to show that they were largely independent from one another.
12. My reading of these documents corresponds with an email, dated 13 September 2021, from one of the tenants (I will refer to them as 'RR'). RR signed the tenancy on 1 June 2019 and has provided a table showing their estimation of what tenants were in residence over specific periods. Notably, RR was an occupant at the time that the Article 4 direction came into force. They were also one of the individuals named on the council tax bill dated 9 July 2019 and subsequently on another council tax bill dated 8 March 2021. A mobile phone bill also addressed to RR at the appeal site, is dated 20 March 2021. This helps to show with what I consider would be a reasonable degree of accuracy, that RR and 3 other individuals were in occupation before the Article 4 direction became effective. The email is not a sworn statement but I can give substantial weight in favour of what RR says about the property at that time, particularly as it is consistent with other documents provided by the appellant.
13. Given the documents I have referred to above, I consider that it is probable that the building was occupied as a small HMO by 4 individuals before the Article 4 direction came into force. As such, the change from Class C3 to Class C4 would have been permitted development under the terms of the GPDO. From that point, occupation appears to have continued in a similar manner. It has been held that when lawful use rights have been gained, they can only be lost in certain circumstances which are not argued by the Council and not by periods of inactivity. In any event, the email from RR indicates that there were no significant breaks in occupancy. Two of the tenants who were in occupation when the Article 4 direction came into force, were still in occupation when the application was submitted. The other 2 tenants present when the Article 4 direction came into force were resident until a month or 2 before the application was submitted with further tenants appearing to have taken over within a short time afterwards. The evidence indicates that some changes in

tenants continued to the date of the application. That helps to show that the occupancy of the property continued to be as a small HMO and that it had not flipped back to a Class C3 dwellinghouse.

14. The Council says that it cannot find any records of an HMO licence for the dwelling. However, s191 makes no reference to such matters affecting lawfulness within the terms of the Act. It is not therefore determinative with respect to a LDC even if it is contrary to any other legislation.
15. The property appears to have been in use as a small HMO at the time of the application and that had existed since before an Article 4 direction came into force on 1 January 2021. As such, the change of use constituted permitted development under the provisions of Article 3 and Schedule 2, Part 2, Class L of the GPDO.

Conclusion

16. 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 change of use of the dwelling from C3 (residential) to a C4 (small HMO) 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.

Andy Harwood

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 17 June 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched 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:

On the balance of probabilities, the property appears to have been in use as a small House in Multiple Occupation as defined by Schedule 1, Part 3, Class C4 (small HMO) of the Town and Country Planning (Use Classes) Order 1987 (as amended) at the time of the application. That use appears to have existed since before an Article 4 direction came into force on 1 January 2021. As such, the change of use to a small HMO constituted permitted development under the provisions of Article 3 and Schedule 2, Part 2, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Andy Harwood

Inspector

Date: 10 January 2024

Reference: APP/E5900/X/21/3286117

First Schedule

The existing use as "C4 - small HMO"

Second Schedule

Land at 138 Bow Common Lane, Bow, London E3 4BH

IMPORTANT NOTES – SEE OVER

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 matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter 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.

