



Appeal Decision

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2024

Appeal Ref: APP/U5930/X/23/3330571

18 Borthwick Road, Stratford, LONDON, E15 1UD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Andrew Pitkeathly against the decision of Waltham Forest London Borough Council.
 - The application ref 230299, dated 6 February 2023, was refused by notice dated 27 September 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 as a house in multiple occupation (HMO) (Use Class 4)
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As this appeal relies on historic evidence relating to the occupation of the property since 15 September 2014, a site inspection was not necessary.
3. For the avoidance of doubt I should explain that the planning merits of any use or operations are not relevant and not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case and on relevant planning law and judicial authority.
4. The applicant needs to show that the claimed use satisfies s191, as amended, as being lawful. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.
5. It is evident from the appellant's comments that he has been dissatisfied with the advice received and the performance of the Council in connection with his application and this appeal. In particular, at the time of acquisition of the property, the local authority search assured the appellant and his solicitor that there had not been a withdrawal of permitted development rights. Whilst unfortunate, such matters are not material to this case and should be pursued separately by the appellant with the appropriate bodies.

Main Issue

6. I consider the main issue to be whether the Council's decision to refuse to grant an LDC was well founded. An Article 4 Direction under the Town and

Country Planning (General Permitted Development) Order 1995 as amended came into effect on 16 September 2014 which removed permitted development rights for changes of use to convert a single family dwelling (Use Class C3) to a small-scale HMO (Use Class C4) and consequently the use would need to have commenced before this date and continued uninterrupted since that time for it to be lawful.

Reasons

7. The appellant acquired the property in June 2015 from Ismail Taskiran who rented out rooms to four of his key workers (of his company ISTA Construction) from the summer of 2010 until it was sold. This is confirmed in his signed letter of 2 February 2023, with wording provided by the appellant. After acquisition the appellant indicates that he took on the service of three builders who lived with the appellant at the appeal property during renovation work in preparation for renting out the property as a four person HMO. An HMO licence was granted in December 2016 and an application renewal granted in 2020 but the appellant was advised that the property required planning permission for a C4 use.
8. The appellant has submitted a large quantity of documentary evidence in support of his case (some 345 pages), including tenancy agreements, tax returns and bank statements, much of which relates to events after September 2015. The Council has systematically analysed the evidence and is not satisfied that the burden of proof has been met by the appellant. Further information submitted by the appellant to the Inspectorate after 4/5th January 2024 was not considered by the Council.
9. In the appellant's response to the Council's statement of case, he states that when making his application for an LDC he was of the opinion that the evidence would suggest on the balance of probability 'that the property had been operated as an HMO at least since December 2016'. Whilst the evidence does suggest this is probable, there is little evidence to support Mr Taskiran's letter regarding its use since before 16 September 2014 which is essential to support the appellant's case. As Mr Taskiran's letter is not a Statutory Declaration, I cannot attach the same degree of weight I would otherwise attach to it albeit that it provides a modicum of support for the appellant's case.
10. There are also unaccounted gaps in the continuity of occupation of the property, such as when the property changed hands and work was carried out to it. Any such gap in the continuity of use is not necessarily fatal to the lawfulness of a use as depending upon the specific circumstances of a case, such interruptions can be regarded as de minimis. However, there is a considerable period of time when work was being carried out for repairs to the property and the start date of 17 January 2018 in the earliest tenancy agreement.
11. Whilst an HMO licence issued by the same Council as the planning authority is not necessarily conclusive about the use of a property, in respect to active use and the number of persons in occupation, it nevertheless carries weight when considered with the totality of the evidence. The Revenue and Licensing Services Team confirmed that an application of November 2016 indicated that there were four people living in the property. I also note the comment of Electoral and Democratic Services regarding people's registration, the difficulty in getting information about the property, and its use as an HMO.

12. However, there is no evidence other than Mr Taskiran's brief letter of the change of use to an HMO prior to the critical date of 15 September 2014.
13. When looking at the evidence it is helpful to look at it holistically and to consider whether collectively it leads to a conclusion that what is being argued is 'probable'. It is acknowledged by the courts¹ that an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict the appellant's version of events, or make it less than probable, and the evidence is sufficiently precise and unambiguous, it should be accepted.
14. However the evidence for the period before the appellant's acquisition of the property is vague and inadequate and the appellant has not demonstrated that it is probable that the change of use occurred prior to 15 September 2014 and continued thereafter.

Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the change of use to a house in multiple occupation (HMO) (Use Class 4) was well-founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

P N Jarratt

INSPECTOR

¹ Gabbittas v SSE & Newham LBC [1985] JPL 630