



Appeal Decision

Hearing held on 18 June 2024

Site visit made on 24 June 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2024

Appeal Ref: APP/E5900/X/24/3339125

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) 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/24/00050, dated 12 January 2024, was refused by notice dated 29 January 2024.
 - 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 the use of No. 3 Landons Close as being a (C4) HMO.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs is made by the Council of the London Borough of Tower Hamlets against Miss Ismat Zaheer. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

4. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) and (b) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
5. A Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 applies to the area in which the

appeal property is located. The Article 4 Direction came into force on the 1 January 2021 and removes the permitted development rights conferred by Schedule 2, Part 3, Class L(b), ie 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).

6. Given the above, the question is whether the use of the property changed to a C4 Use Class house in multiple occupation (HMO) after the Class L(b) permitted development rights came into force, but prior to the date on which the Article 4 Direction came into force (1 January 2021) and therefore had the benefit of planning permission.
7. The Assured Shorthold Tenancy Agreement (ASTA) covering the term of 4 November 2020 to 3 November 2021, covers the period when the Article 4 Direction came into force. The ASTA identifies four people as 'the Tenant'. During the Hearing, the appellant's agent stated he had witnessed four individuals in the property at the time and he believed they were not related.
8. Nevertheless, paragraph 5.1 of the ASTA states 'To use the Property for the purpose of a private residence only in the occupation of the Tenant and his immediate family'. This suggests the property was rented out on the basis of it being in single family occupation, not a HMO. Moreover, the agreement is not signed by any party, which raises doubt over whether the people identified as the tenant occupied the property at all. Overall, this evidence raises ambiguity as to how the property was occupied at the time the Article 4 Direction came into force.
9. The copy of the ASTA covering the period of 4 November 2020 to 3 November 2022 is similarly worded and is also unsigned by the people identified as the tenant.
10. A planning application was made in July 2022 for the change of use of the appeal property from C3 use to a HMO¹. One of the questions on the application form was 'Has the work or change of use already started?'. The answer given to this was 'No'. A further application was submitted in December 2022 for a lawful development certificate for the conversion of the garage². The application form confirmed the use related to the proposal was 'C3-Dwellinghouses' and the 'Existing use class to remain the same'. During the Hearing, the appellant's agent confirmed that these were administrative errors on the application forms and the property was in fact in C4 use at the time these two applications were made. Whether it was an error or not, it only adds to the ambiguity of the evidence submitted.
11. The copies of the ASTA's from early 2023 onwards relate to each individual room (1-5) with an individual tenant identified on each agreement, suggesting the property was in C4 use at that time. However, prior to this period, including the 1 January 2021, for the reasons I have set out about, the evidence relied on by the appellant is ambiguous and imprecise.
12. A further application was submitted in March 2023 for a certificate of lawful development for the use of the property as a C4 HMO. The application was refused and the subsequent appeal³ was dismissed. The evidence submitted in

¹ Council ref: PA/22/01503

² Council Ref: PA/22/02615

³ Appeal ref: APP/E5900/X/23/3324690

support of that appeal was almost identical to that submitted in support of the appeal before me. Apart from the confirmation of the administrative errors in the previous application forms, which only came to light during the Hearing, there has been no evidence submitted to address the issues raised by the previous Inspector.

13. Moreover, the Council confirm that Council Tax records indicate that between 4 November 2016 and 14 October 2022, the previous owner let the property, but not as an HMO.
14. The drawings submitted with the application are not correct as they only indicate the property as having 3 bedrooms whereas there are ASTAs referring to bedrooms 4 and 5. Drawings submitted with the previous LDC application included 5 bedrooms. Notwithstanding the appellant's agent confirming in an email to the Council, dated 21 March 2024, that the works relating to the PA/22/02615 application (the LDC for the conversion of the garage) would not be going ahead, during the Hearing, he was unclear as to whether the garage had in fact been converted.
15. During my site visit, it was clear there were five bedrooms in the property, with the layout matching that identified out in the drawings submitted with the previous LDC application, including the garage having been converted into a bedroom. I also note that the Final Certificate issued by Stroma Building Control, dated 17/02/2023 confirms the works described as 'Conversion of garage into a habitable room and formation of a ground floor WC' were completed. This discrepancy over the layout of the building does not materially affect the application as both a 3 bedroom and 5 bedroom HMO would fall under a C4 use class. However, it further adds to the ambiguity and impreciseness of the evidence.
16. I note the appellant's argument that they feel they were given ill-advice from a Council officer regarding the submission of the previous applications for the conversion of the garage and change of use of the property. However, this has had no bearing on my consideration of the appeal before me.
17. I find therefore, the evidence is not sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the use of the appeal property changed to a C4 Use Class house in multiple occupation after Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 came into force, but before the Article 4 Direction came into effect. As planning permission has not been granted for the use of the appeal property as a C4 use at the time the LDC application was made, the use is unlawful.

Conclusion

18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development is 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.

A Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Josh Dobson – Agent

FOR THE LOCAL PLANNING AUTHORITY:

Nicholas Jehan – Principal Planning Officer, the Council of the London Borough of Tower Hamlets

Sally Fraser, Development Management Team Leader, the Council of the London Borough of Tower Hamlets