



Appeal Decision

Site visit made on 1 July 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 25TH JULY 2024

Appeal Ref: APP/G5750/X/23/3325772

59 Wise Road, Stratford, Newham, LONDON, E15 2TG

- 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 L Rahman against the decision of London Borough of Newham.
- The application ref 22/03042/CLE, dated 28 December 2022, was refused by notice dated 18 April 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 'Established as an HMO more than 4 years prior to application'.

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. The appellant submitted new evidence with the appeal which was not before the Council when it made its decision. Since s195(2) of the Town and Country Planning Act 1990 ('1990 Act') refers to whether or not the Council's refusal was well-founded, rather than the reasons for that decision, it is appropriate that I consider the new evidence.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development ('LDC') was well-founded. This will turn upon whether the existing use described in application documents was lawful as at the date of the LDC application, and the onus is on the appellant to make their case on the balance of probability. Planning merits are not relevant.

Reasons

Legislative position

3. Section 191(2) of the Town and Country Planning Act 1990 ('1990 Act') states that uses are lawful at any time if (a) no enforcement action may then be taken in respect of them; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. There is no suggestion here that the existing use is in breach of an enforcement notice. The point in contention is whether no enforcement action could be taken against the existing use as at the date of the LDC application. This could, for example, be because the use claimed does not represent a material change of use ('MCU') and so does not constitute development

requiring planning permission¹, or because the time for enforcement action has expired, and the claimed use is therefore immune.

5. The appellant's argument is that enforcement action could not be taken because the time for enforcement action has expired; no argument is made that a MCU has not occurred. Indeed, the appellant has provided no detailed evidence as to the use made of the property prior to the existing HMO use claimed, and very little information as to the precise nature of the current use in order to enable me to make a proper assessment as to whether there has been a change in the character of the use².

Existing use claimed

6. Use Class C4³ relates to 'use of a dwellinghouse by not more than *six* residents' (my emphasis) as a house in multiple occupation ('HMO'). The appellant's statutory declaration makes reference to the continuous use of the '7 bedroom HMO' appeal property as a single unit. This reflects the number of bedrooms shown on the plans appended to the appellant's statutory declaration, and what I saw at my site inspection.
7. The current use described in the LDC application form is though referenced as under Use Class C4, and I note that evidence from the appellants managing agents indicates that for the period 1 January 2018 to 28 February 2022 the property was let to '6-7 tenants' and that as at 6 December 2022 there were '6 tenants residing there'. The appellant's statutory declaration also lacks precision in the sense that it refers to continuous use as a seven bedroom HMO whereas the evidence appended to the statutory declaration indicates that over the period claimed, the property was at times in use by six residents.
8. Thus the appellant's evidence lacks precision as to the number of residents over the period claimed such as to demonstrate continuous use as either a Class C4 HMO or a sui generis 7 person HMO. Whilst this alone would be enough for me to find that the use claimed is not lawful, for completeness I consider below the evidence submitted as regards the immunity period.

Immunity period

9. Although the application form refers to a C4 use, I would be empowered by s191(4) of the 1990 Act to modify the description of the use described in the application if I were satisfied of the lawfulness of the other use as modified. If evidence submitted had been precise as to the number of residents over the immunity period, I could in theory have granted a LDC for either a 6 person Class C4 HMO or a 7 person sui generis HMO.
10. As to a Class C4 use, a change of use from a C3 single dwellinghouse to a Class C4 HMO is permitted development⁴ ('PD'). However, in July 2013 the Council issued an Article 4 Direction withdrawing PD rights in respect of such a change. The Article 4 Direction does not apply retrospectively but the appellant adduces no substantive evidence of a 6 person HMO use prior to the relevant date of 31

¹ Pursuant to s55 and s57 of the 1990 Act

² Such as to indicate that a MCU, and therefore development requiring planning permission, has occurred

³ Per Schedule 1 Part 3 of the Town and Country Planning (Use Classes) Order 1987 as amended

⁴ Pursuant to Schedule 2 Part 3 Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015

July 2013; the application for a proposed change of use in 2015⁵ does not in my view indicate a pre-2013 use.

11. An alternative means to demonstrate immunity for either a 6 person Class C4 HMO use or a 7 person sui generis HMO use would be under section 171B of the 1990 Act (as in force at the date of the LDC application⁶). This sets out that no enforcement action may be taken after the end of the period of four years beginning with the date of the breach consisting of the change of use of any building to use as a single dwellinghouse. All other changes of use were subject to a ten year immunity period.
12. The appellant seeks to rely on the four-year immunity period referenced above but this does not apply to a change of use to a HMO or other residential uses where individual units are not self-contained⁷. Even the claimed change to a use class C4 HMO relates to the *use of* a dwellinghouse as a HMO. Consequently, this does not indicate a change of use *to* a single dwellinghouse. The ten year rule under s171B(3) therefore applies.
13. Evidence submitted by the appellant seeks to demonstrate that the HMO use claimed began, at the earliest in May 2015. This evidence is not therefore capable of demonstrating ten years' immunity being achieved by the date of the application. Further, the evidence provided lacks detail and precision such as to demonstrate continuous use even over a four year period. The certificate of completion of building works does not demonstrate that the use commenced, only that works were completed. The nature of the guaranteed rent arrangement with InstaBook Limited indicates that evidence of payment from this managing agent does not necessarily correlate with occupation of the property since it appears that rental payment would be made even if tenants were not occupying the property.
14. Drawing these matters together, I find that the appellant has not demonstrated on the balance of probability that the claimed use, nor use as a 7 person HMO, is immune from enforcement action. On the evidence before me, I find that neither the use claimed, nor use as a 7 person HMO was lawful as at the date of the LDC application.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a use 'Established as an HMO more than 4 years prior to application' 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.

Formal Decision

16. The appeal is dismissed.

V Bond

INSPECTOR

⁵ Ref: 15/01924/CLP

⁶ (Amendments to these provisions apply in certain cases from 25 April 2024 per the Levelling-up and Regeneration Act 2023 but are not applicable in this appeal)

⁷ The bathrooms within the property are shared and separate from the HMO bedrooms and so these units are not self-contained