
Appeal Decision

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 30 July 2024

Appeal Ref: APP/U5930/X/23/3323963

154 Selwyn Avenue, Chingford, London E4 9LS

- 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 Ms Kim Fuwa against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 222733, dated 17 September 2022, was refused by a notice dated 9 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 use of property as a small house in multiple occupation (HMO) (Use Class C4).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Considering the matters at appeal it was not necessary to visit the appeal premises. I have therefore made my decision based on the representations and supporting information submitted by the main parties as a matter of course as part of the application and appeal process.
3. Section 194(4) of the Town and Country Planning Act 1990, as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal.

Main Issue

4. In order for a lawful use or development (LDC) to be granted under section 191 of the 1990 Act, the burden of proving relevant facts in this appeal rests on the appellant, and the test of the evidence is the balance of probability. If there is no evidence to contradict or make the appellant's version of events less than probable and the appellant's evidence alone is sufficiently precise and unambiguous, a LDC should be granted.

5. The main issue is whether the Council's decision to refuse to grant a LDC was well founded. That turns on whether the appellant can demonstrate, on the balance of probabilities, that the change of use to a small house in multiple occupation (HMO) took place more than ten years before the date of the application and continued without significant interruption thereafter, so as to be immune from enforcement action. The relevant date in this instance being 17 September 2012.
6. Having regard to case law, a consideration is whether this building has been used as a small HMO throughout the whole of the ten years, so that the planning authority could at any time during that period have taken enforcement action.
7. Furthermore, the change of use does not need to have been in the 10year period immediately preceding the date of the LDC application, provided that there has been no subsequent change of use since that use became lawful.

Summary of cases

8. The appellant maintains that the property has been in continual use as a small HMO since 2011. Evidence has been provided in the form of Council tax documents and tenancy agreements (TA). The Council do not consider that the evidence demonstrates use of the property as a small HMO for at least 10 years. However, the appellant does not believe that the Council took into account the additional Assured Short Term Tenancy Agreements (AST) for the period of 2011-2015, which they submitted as evidence in support of their case during the application process. That evidence formed part of the appeal documents and I have taken it into account in reaching my decision.

Assessment of evidence

9. The Town and Country Planning (Use Classes) Order 1987, as amended, states that for the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004. Generally, this use occurs when tenanted living accommodation is occupied by persons as their only or main residence, who are not related, and who share one or more basic amenities.
10. Floor Plans submitted with the application show four bedrooms, two of which are en-suite, with the other two bedrooms sharing a bathroom. The property has a single kitchen, dining area and a store. A variety of tenancy agreements have been provided. The first TA commenced on 26 May 2011 and there are further agreements for the intervening years through to 2022. Council Tax Bills issued from 2015-2022 have also been provided.
11. Although the TA appear to run consecutively between 2011 and 2022, thus over a 10year period, each TA relates to a single occupier. There is no evidence of TA for more than one person during the same rental period, and thus no evidence that the property has been occupied by more than one person at any one time. Furthermore, there is no evidence of unrelated persons occupying the property at the same time, which would be necessary for the property to be in use as an HMO. Moreover, the TA from 31 July 2015 onwards clearly state that the property should be used as a single private dwelling and must not be sublet, nor should the tenant let other persons live at the

property. It is also relevant that, in isolation, without corroborating information, e.g. statutory declarations or evidence of rent taken, the TA do not provide proof of occupation.

12. The Council Tax Bills do not provide proof of occupation nor any evidence of use of the property as an HMO.
13. There is also a discrepancy on each of the individual TA for the term of 12 months commencing 31 July 2017, 31 July 2018 and 31 July 2019. Each of these agreements is dated 31 July 2015, which casts doubt on their authenticity.
14. Overall, therefore, I consider that the information submitted with the LDC application is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the property has been in continuous residential use for a 10 year period as a small house in multiple occupation (Class C4) for a period commencing on or before 17 September 2012.

Conclusion

15. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of use as a small house in multiple occupation (Class C4) 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.

Elizabeth Pleasant

INSPECTOR