

Appeal Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th of September 2024

Appeal Ref: APP/C5690/X/24/3342534

8 George Beard Road, London SE8 3PE

- 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 Adrian Christian against the decision of the Council of the London Borough of Lewisham.
 - The application ref DC/23/134089, dated 29 November 2023, was refused by notice dated 21 February 2024.
 - The application was made under section 192(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 'Change of Use from C3 dwelling house to C4 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 proposed use which is found to have been lawful.

Procedural matters

2. The application form is dated 29 November 2023. However, the appellant states that the application was submitted on 2 December 2023, and I have taken that as being the true date of the application.
3. The appellant's proposal is described in terms of the change of use that was sought. However, a certificate granted under s192 needs to specify the use rather than the change that would lead to it. I have therefore approached the appeal on the basis that it sought to establish that use of the property as a House in Multiple Occupation (Use Class C4) (a C4 HMO) was lawful.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue a certificate was well-founded. This turns on whether, on the date of the application, the use of the property as a C4 HMO would have been lawful.

Reasons

5. It is common ground that the property was lawfully used as a dwellinghouse (Use Class C3) when the application was made. A change of use amounts to development if such a change is 'material'. However, Class L of Part 3 of

Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 2015* makes specific provision for change from Class C3 to Class C4. In other words, such a change is ordinarily 'permitted development'. The appeal property would have benefited from those rights when the application for an LDC was made.

6. An Article 4 Direction removing the right to change from Class C3 to Class C4 within this area came into force on 19 January 2024. The Council subsequently issued its refusal of the LDC application, citing the Article 4 Direction in doing so.
7. However, the critical date is not the date of the Council's decision, but the date of the application. This is clear from s192(2) of the Act, which states 'If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect' (my emphasis). The introduction of an Article 4 Direction after the application was made could not alter the position on the date of the application; the Direction does not apply retrospectively.
8. The Council argues that the appellant failed to demonstrate that the property would be occupied as an HMO at the time the Article 4 Direction came into force. However, there was no need for the appellant to demonstrate this. The legislation relating to LDCs draws a clear distinction between proposed and existing uses. The application here was made under s192 for a *proposed* use. The question posed by such an application is whether the use *would* be lawful *if* instituted or begun at the time of the application; there is no requirement to show that the use has already commenced, or that it is capable of commencing in any particular timeframe. Applications for existing uses are addressed separately under s191 of the Act.
9. It follows from the above that I am not persuaded that the Article 4 Direction provides any reason for withholding a certificate in this instance. Nor can I see that it should be withheld for any other reason.

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC 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) and issue a certificate. As I have already explained, and as the certificate itself makes clear, it relates only to the question of the lawfulness of the proposed use on the date of the application.

Peter Willows

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(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 2 December 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the date of the application, the property was in use as a C3 dwellinghouse. Article 3 and Class L of Part 3 of Schedule 2 to *The Town and Country Planning (General Permitted Development) (England) Order 2015* would have permitted a change of use to a Class C4 House in Multiple Occupation. There was no Article 4 Direction restricting such a change of use at that time.

Signed

Peter Willows

Inspector

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First Schedule

House in Multiple Occupation (Use Class C4)

Second Schedule

Land at 8 George Beard Road, London SE8 3PE

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

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

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

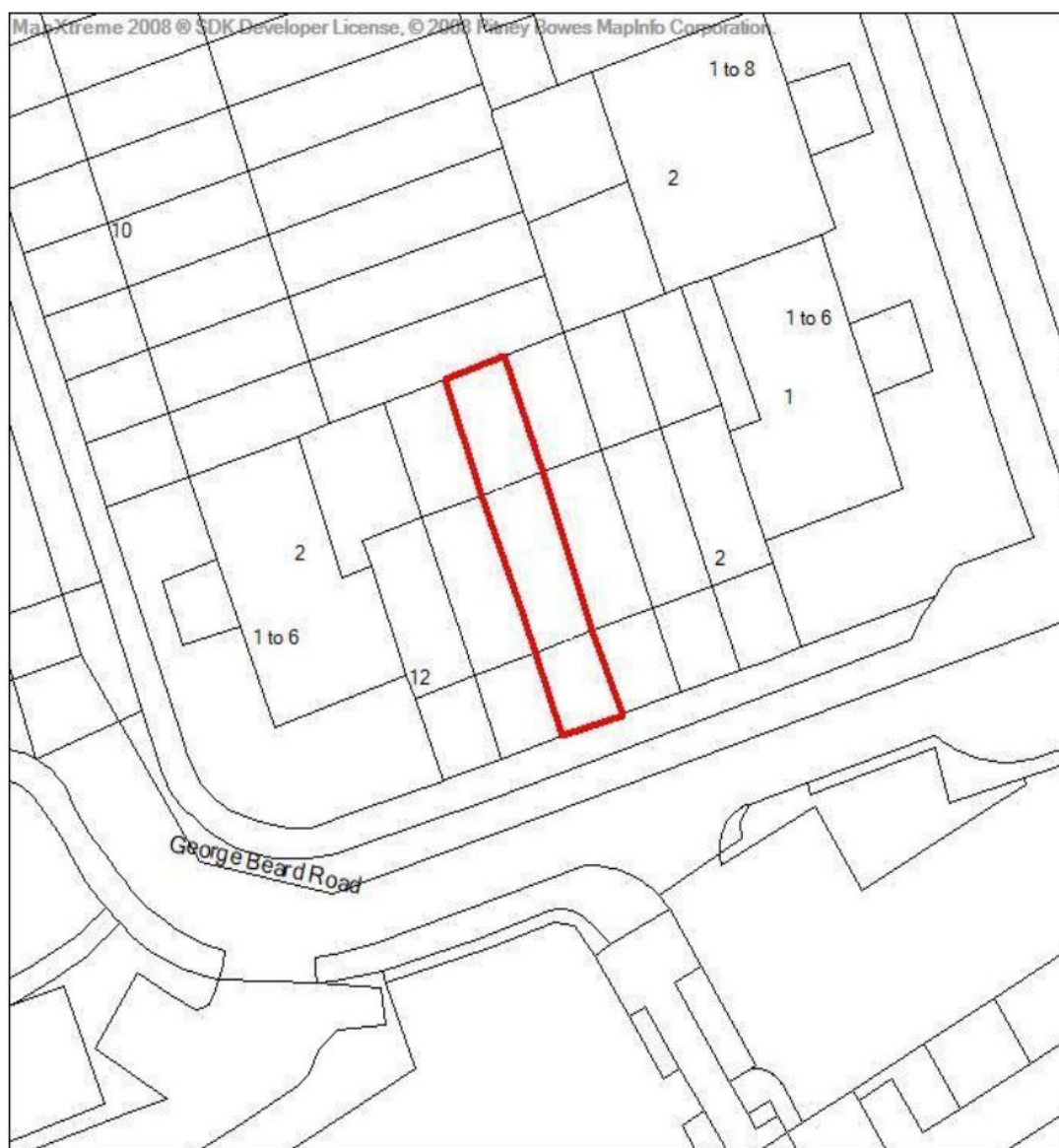
This is the plan referred to in the Lawful Development Certificate dated: 16th of September 2024

by **Peter Willows BA MRTPI**

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Scale: Not to Scale



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