



Appeal Decision

by **L Perkins BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Appeal Ref: APP/U5930/X/23/3320245

75 Albert Road, Waltham Forest, Walthamstow E17 7PT

- 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 Emmanuel Decesare against the decision of the Council of the London Borough of Waltham Forest.
 - The application, Ref 230200, dated 26 January 2023, was refused by notice dated 23 March 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 follows: "The dwelling has been in use as a C4 HMO for in excess of 10 years".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. By a letter dated 10 July 2024, arrangements were made for me to visit the appeal site on 25 July 2024, accompanied by a representative of the Council and the appellant. The appellant met me outside the appeal site at the appointed time but nobody attended on behalf of the Council and so the site visit was aborted. However, the main parties are in agreement that it is not essential for me to enter the site and I am satisfied the appeal may be determined without an internal inspection of the building. So I have proceeded on this basis.

Main Issue

3. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

4. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use.
5. Section 191(2) of the same Act states that for the purposes of this Act uses are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

6. Section 191(4) provides 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 of the use described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
7. Planning Practice Guidance (PPG) states that the applicant is responsible for providing sufficient information to support an LDC application. In the case of applications for existing use, it states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
8. It is clear that the use the appellant claims is lawful is a 'Class C4 HMO'. This is defined in The Town and Country Planning (Use Classes) Order 1987 (the UCO) as the 'use of a dwellinghouse by not more than 6 residents as a House in Multiple Occupation' (HMO). In the context of this type of use, in broad terms, 'HMO' means that the living accommodation is occupied by persons who do not form a single household and two or more of the households share one or more basic amenities, or that the living accommodation lacks one or more basic amenities (basic amenities being a toilet, personal washing facilities or cooking facilities).
9. By contrast, the UCO defines a 'Class C3 Dwellinghouse' as the 'use as a dwellinghouse (whether or not as a sole or main residence) by—(a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4).
10. The application form declares that the grounds for the LDC application are that the use began more than 10 years before the date of the application. As such, the appellant relies on section 171B of the 1990 Act. This provides time limits within which enforcement action may be taken. For the use described by the appellant in this case, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach, (stated on the application form as 27 January 2013). This is often referred to as 'the 10 year rule'.
11. However, 'permitted development' rights generally exist, under The Town and Country Planning (General Permitted Development) Order (the GPDO), to carry out development without an express grant of planning permission from the local planning authority. One such right is for a dwellinghouse to change to a C4 HMO. Permitted development rights may be restricted, by a direction, pursuant to Article 4 of the GPDO.
12. The evidence in this case indicates that the appeal property is subject to such an Article 4 Direction, which removed the permitted development right to change the use of the dwellinghouse to a C4 HMO. But that direction only came into force on 16 September 2014, after the change of use is said by the appellant to have already begun.

13. This being the case, the property would have benefitted from the relevant permitted development right, available under Schedule 2, Part 3, Class I of the 1995 GPDO, in force at the time.
14. So before considering the 10 year rule, based on the evidence provided, I must first consider whether the appeal premises changed to the use described prior to the date the Article 4 Direction came into force.
15. From all of the information provided, the evidence relevant to the period before the Article 4 Direction came into force consists of a Statutory Declaration of Edoardo Magno dated 13 January 2023, an Assured Shorthold Tenancy Agreement dated 6 July 2012 and an email dated 12 June 2013, timed at 21:50, written by Paola Bottinelli.
16. Edoardo Magno declares that he lived at the property between July 2012 and January 2018 and that during that period the property was occupied by "a group of friends" (including his brother, Gregorio Magno), where the number of tenants ranged from 4 to 5. But this statutory declaration does not specify that the use was a C4 HMO and it does not say whether the occupants lived together as a single household (as a group of friends may, pursuant to Class C3 of the UCO) or crucially, whether they did not form a single household (pursuant to Class C4 of the UCO).
17. In respect of the relevant tenancy agreement, if each bedroom is occupied separately and subject to an individual tenancy agreement with a non-resident landlord, the use of the property is likely to be multiple occupation and not use as a dwellinghouse. However, in this case a single tenancy agreement has been provided for the period before the Article 4 Direction came into force and this tenancy agreement carries the name of all occupants. So on the balance of probability, this tenancy agreement suggests that the occupants were living together as a single household, ie a Class C3 use, rather than as separate households, each with their own tenancy agreement.
18. In respect of Paola Bottinelli's email, this does not say whether the occupants lived together as a single household or whether they did not form a single household. Paola Bottinelli describes one of the other tenants, Gregorio Magno, as her boyfriend. The connection between Paola Bottinelli, Gregorio Magno and Edoardo Magno is not consistent with a C4 HMO, where the living accommodation is occupied by persons who do not form a single household.
19. In respect of the 10 year rule, I must consider, based on the evidence provided, whether the land identified by the appellant changed use to that described by the appellant and continued to be so used for 10 years after the date of the change and before the date of the application, such that the Council could have taken enforcement action at any time during that 10 year period.
20. The date that the Article 4 Direction came into force falls within the 10 year period prior to the date of the LDC application. So in light of my findings above about the evidence provided relevant to the period prior to the Article 4 Direction coming into force, the appellant cannot demonstrate 10 years.
21. Taking all of the above into account, I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to demonstrate on the balance of probability that the appeal building changed to the use described prior to the date the Article 4 Direction came into force.

22. Moreover, I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to demonstrate on the balance of probability that the appeal building changed to the use described and continued to be so used for at least 10 years after the date of the change and before the date of the application, such that the Council could have taken enforcement action at any time during that 10 year period.

Conclusion

23. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use as a C4 HMO 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.

L Perkins

INSPECTOR