



Appeal Decisions

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2024

15 Ivydale Road, Southwark, London SE15 3DR

Appeal A: APP/A5840/X/23/3325152

- 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 Roktom Care Limited against the decision of the Council of the London Borough of Southwark.
- The application ref 23/AP/0978, dated 6 April 2023, was refused by notice dated 6 June 2023.
- 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 'The formation of a 6 bed HMO'.

Appeal B: APP/A5840/X/23/3328525

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Roktom Care Limited against the decision of the Council of the London Borough of Southwark.
 - The application ref 23/AP/1624, dated 10 June 2023, was refused in part by the Council by notice dated 9 August 2023.
 - 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 'The formation of a 6 bed HMO'.
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Decisions

Appeal A

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 be lawful.

Appeal B

2. 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 be lawful.

Procedural matter

3. Given the nature of the dispute in this case it was not necessary to carry out a site visit.

Application for costs

4. An application for costs against the Council has been made by Roktom Care Limited in respect of Appeal A. That application is the subject of a separate decision.

Main Issue

5. The main issue for both appeals is whether the Council's decision was well-founded. This turns on whether, on the date of the application, the use of the property as a 6 bed HMO would have been lawful.

Reasons – Appeal A

The certificate the appellant seeks

6. The refusal arises from the Council's concern that the appellant did not, in fact, intend to use the property as a 6 bed HMO (House in Multiple Occupation). This appears to stem from the appellant company's business as a care provider, combined with the small size of a bedroom which, the Council contended, was to be used by a carer.
7. However, the description of the proposal in the application form is specifically for a 6 bed HMO, and there is no reference to the provision of care. Nor are the drawings annotated to give any such impression. The Council officer's report refers to a site visit when, it is reported, the appellant's representative advised that Bedroom 6 was for the use of a carer. Nevertheless, the report goes on to state that the appellant subsequently confirmed that the care element was not part of this proposal. Given that clarification, together with the description on the application form and the plans provided, it is clear that the application was for a 6 bed HMO, regardless of any other plans the appellant may have had for the property.
8. The Council's decision refers to the small size of Bedroom 6. However, any scepticism the Council may have had about the appellant's intentions does not alter the simple fact of what was applied for. In any event, the Council subsequently granted a certificate for a 6 bed HMO, specifically where no care was to be provided, based on the same floorplan. In the light of that decision, it does not appear that the Council itself ultimately considered that the small size of the room meant that a 6 bed HMO could not be proposed.
9. With these points in mind, I have determined the appeal on the basis that the certificate sought is for a 6 bed HMO.

Whether the proposed use was lawful

10. It is common ground that the property was lawfully used as a dwellinghouse (Use Class C3) when the application was made. There is no dispute either that a 6 bed HMO would fall within Class C4, which is *Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"*. Change to a use in a different use class 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* (as amended) makes specific provision for change from Class C3 to Class C4. In other words, such a change is ordinarily permitted development. The appellant advises, and the

Council does not dispute, that there was no Article 4 Direction in place to remove such rights when the application was made.

11. Thus, it is clear that the appeal property would have benefited from the Class L permitted development rights when the application for an LDC was made. Indeed, the officer's report states 'The change from use class C3 to C4 is permitted development'. There is nothing else before me to suggest any reason the proposed 6 bed HMO use would not have been lawful. Thus, a certificate should have been issued.

Reasons – Appeal B

12. In the case of this subsequent application, which sought a certificate for the same use, the Council granted a certificate. However, the certificate it issued had an amended description, reading 'use as a 6 bed House in Multiple Occupation (HMO) with no element of care provided to occupants'.
13. It is clear from the application and this appeal that the appellant sought a certificate simply for the formation of a 6 bed HMO. I have already concluded in relation to Appeal A that a certificate should have been issued for that use. It does not appear that there was any material change in circumstances between the two applications. Consequently, a similar certificate could also have been issued in response to the Appeal B application.
14. The Council considers that the description of Class C4 and the definition of HMO in section 254 of the *Housing Act 2004* makes it evident that an HMO does not include a care/support element. Thus, it is argued, the extra wording does not change the meaning of the certificate. However, if the additional wording had no effect on the meaning of the certificate, it was an unnecessary change. Accordingly, a revised certificate with the use described in accordance with the appellant's application can be issued.

Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's decision in relation to each application was not well-founded and that the appeals should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended) and issue the certificates applied for. The two certificates will be identical, save for the fact that they will refer to the use being lawful on different dates, those being the dates of the applications.

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 6 April 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 lawful use as a dwellinghouse falling within Class C3 of The Town and Country Planning (Use Classes) Order 1987 (as amended). Class L of Part 3 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) permits change from Class C3 to Class C4, and did so at the time the application was made. Consequently, the change of use to a 6 bed House in Multiple Occupation (HMO), which falls within Class C4, was permitted development on the date of the application.

Signed

Peter Willows

Inspector

Date: 18 November 2024

Reference: APP/A5840/X/23/3325152

First Schedule

The formation of a 6 bed HMO

Second Schedule

Land at 15 Ivydale Road, Southwark, London SE15 3DR

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 /operations 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 /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 18 November 2024

by Peter Willows BA MRTPI

Land at: 15 Ivydale Road, Southwark, London SE15 3DR

Reference: APP/A5840/X/23/3325152

Scale: Not to Scale





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 10 June 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 lawful use as a dwellinghouse falling within Class C3 of The Town and Country Planning (Use Classes) Order 1987 (as amended). Class L of Part 3 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) permits change from Class C3 to Class C4, and did so at the time the application was made. Consequently, the change of use to a 6 bed House in Multiple Occupation (HMO), which falls within Class C4, was permitted development on the date of the application.

Signed

Peter Willows

Inspector

Date: 18 November 2024

Reference: APP/A5840/X/23/3328525

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IMPORTANT NOTES – SEE OVER

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



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