



Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2024

Appeal Ref: APP/U5930/X/23/3315007

Flat 6, Cedar Court, 267 Hainault Road, LONDON E11 1ET

- 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 Mrs Havva Salih against the decision of Waltham Forest London Borough Council.
 - The application ref 221909, dated 28 June 2022, was refused by notice dated 24 August 2022.
 - 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 existing use of property as a house in multiple occupation (HMO)(Use Class C4).
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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 existing use, which is found to be lawful.

Procedural Matters

2. No site visit has been carried out as the appeal can be decided purely on the basis of the technical and/or legal interpretation of the facts. All the information needed is included with the application and appeal documents and so a decision can be reached on the papers.¹ There are no objections from the parties to proceeding in this way.
3. The appellant has submitted additional evidence with the appeal and the Council has addressed this in their statement of case. If only evidence from the time of the application was to be considered as part of the appeal, it denies the purpose of the LDC procedure. This is to arrive at an objective decision based on the best facts and evidence available at the time the decision is taken. In any event, it would always be open to the applicant to re-apply and it would serve no useful purpose to refuse a LDC on the basis only of the evidence submitted with the application, if subsequent evidence had come to light proving the case, on the balance of probability.

Main Issue

4. The appeal concerns the C4 HMO use of a three bedroom flat on the second floor of a three storey block of six flats. The main issue is whether the Council's decision was well-founded. That turns on two requirements:
 - (i) Whether the appellant can show, on the balance of probabilities, that the change of use to a C4 HMO occurred before the confirmation of

¹ Certificate of lawful use or development appeals- procedural guide, updated 12 September 2024, states at paragraph 8.2.10.5. "A site visit won't be needed for every appeal. It is for the Inspector to decide whether to conduct one."

an Article 4 Direction (the Direction) on 16 September 2014, which removed a permitted development right;

This type of change of use was permitted by the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) as amended by the Town and Country Planning (General Permitted Development)(Amendment) No 2 Order 2010; and

- (ii) Whether the appellant can show that the lawful use sought continued, until the date of the application, so as to be immune from enforcement action.

5. Section 191(2) of the 1990 Act, indicates that uses and operational development are lawful at any time if (a) no enforcement action may then be taken in respect of them because, for instance, the time for enforcement action has expired and (b) they do not contravene the requirements of any enforcement notice or breach of condition notice in force. Subsection 191(2)(b) is met here as there is no enforcement notice or breach of condition notice in force. I shall now consider section 191(2)(a).

Reasons

The evidence

6. The appellant has submitted the following documentary evidence:

- Statutory declaration made by the appellant;
- Statutory declaration made by Spencer Munson, estate agent;
- Statutory declaration made by the owner/occupier of Flat 5;
- Statutory declaration made by the owner/occupier of Flat 1;
- Tenancy agreements as set out in the table below:

Tenancy agreement period	Tenant references
2 Jan 2001 for 12 mths	Tenants 1-3
19 Jan 2002 for 13 mths	Tenants 4-7
22 Mar 2003 for 12 mths & 1 week*	Tenants 8-10
26 Feb 2016	Tenants 11-13
24 Apr 2020	Tenants 14- 16
6 Aug 2021	Tenants 17-19

*Not a tenancy agreement as such but a Notice Requiring Possession, which provides these details.

- End of Contract letters dated 10 December 2001;
- Email dated 12 December 2022 from Tenant 14 to appellant;

- Email dated 22 December 2022 from Tenant 15 to appellant;
- Email dated 4 March 2020 from Tenant 12 to appellant;
- Certificate of insurance from 24 March 2003 to 23 March 2004;
- Copy of last page of Private Rented Property Licence (PRPL) application dated 26 February 2016;
- Copy of letter dated 13 May 2016 from the PRPL team enclosing a copy of the licence dated 13 May 2013;
- Gas Safety report dated 7 June 2021;
- Fire risk assessment invoice dated 15 September 2015;
- Electrician invoices dated 23 November 2021;
- Electrical installation condition report dated 23 November 2021;
- Builder's invoice dated 7 December 2021;
- Emails to Theydon Property Services and In Estates dated 20 November 2022; and
- information from Electoral Register dated 2003.

Assessment

7. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant and the test of the evidence is the balance of probabilities. The appellant's own evidence does not have to be corroborated by "independent" evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate. This is on the basis that it is sufficiently precise and unambiguous.
8. The appellant's first requirement is to demonstrate that a material change of use to a C4 HMO occurred before 16 September 2014. The appellant states that the property was bought as a "buy to let" over 20 years ago but does not provide any evidence as to when this took place. She also states on the application form that the use began on 26 August 2010 but provides no subsequent explanation as to the origin of this date, which is contradicted by the earlier tenancy agreements.
9. However, the former occupier of Flat 1 from between 1979-2016 confirms that it was bought as a rental and that the appellant never resided there. From 2005 the former occupier was the Company Secretary and Treasurer for the management company set up to manage the block after the freehold was purchased by all the occupiers. Part of her duties was to collect maintenance payments so she knew the flat was occupied by unrelated individuals from at least 2005, if not before. In particular, she states that the appellant always kept her informed regarding who the tenants were.
10. The earliest tenancy agreement is from January 2001. The pattern of occupancy, namely a group of three friends or colleagues, that is fewer than 6 persons, who signed one tenancy agreement, meant that the use of the property at the time fell within use class C3 Dwellinghouses, of the Town and

Country Planning (Use Classes) Order 1987 (UCO). That was a lawful use which continued until 29 March 2004 based on the evidence of the subsequent two tenancy agreements.

11. A subsequent amendment to the UCO in April 2010 provided a specific definition of a HMO. Properties that were at that time in use as small HMO's, that is those between 3 and 6 unrelated people living together as a single household, were placed in a new class, class C4.
12. An October 2010 amendment to the GPDO permitted changes of use between class C3 and C4 without express planning permission. The Direction, which came into effect in September 2014, removed the permitted development right to change the use of a C3 dwelling to a C4 HMO. However, that did not have a retrospective effect.
13. Although the appellant has been unable to provide copies of tenancy agreements between 2004 and 2010 to show that a C3 use by unrelated individuals continued until 2010 so as to become a C4 HMO, this has been demonstrated in other ways. The statutory declaration from the occupier of Flat 5 states he has lived there since September 2005. His front door is adjacent to the door of Flat 6. He states that the appellant informed all the occupiers for security reasons each time there was going to be a change of tenants. It is a small block of flats and everyone knew each other. He may not provide specific dates but his statement corroborates that of the occupier of Flat 1.
14. The statutory declaration from the appellant's estate agent states he has known her for over 20 years. He has found tenants for her during this period but is unable to provide copies of older documents to support his claim due to meeting the requirements of the Data Protection Act 2018. The appellant has used other estate agents in the area over the years. In her email dated 20 November 2020 to In Estates Ltd she states that she has a copy of the tenancy agreement made by them on 27 August 2008² and asks for copies of those made between 2010 and 2016.
15. The remaining evidence from the appellant confirms that the C4 HMO use continued until the date of the LDC application (28 June 2022). Tenants 11-13 moved in February 2016, initially for 12 months, according to their agreement, but their occupation continued until February 2020, as evidenced by their final utility bills. Tenants 14-16 moved in June 2020 for 14 months according to their tenancy agreement and emails dated 12 December 2022 Tenants 14 and 15 sent to the appellant to support her appeal. Thereafter Tenants 17-19 signed an agreement on 9 August 2021 for 12 months.
16. The Electoral Register evidence demonstrates that Tenants 4-7, who lived at the flat in 2002, chose to register to vote and their names are recorded on the roll the following year. There is further evidence that these people occupied the flat as End of Contract letters were sent to them on 10 December 2001. Whilst making use of Theydons Estate Agents, the appellant submits a copy of a Certificate of Insurance provided by them in the event of loss of rent, for the period March 2003-2004. This corroborates her declaration that she made use of several letting agents over the years.

² Not submitted as evidence and there is no further explanation from the appellant

17. Other evidence is from 2016, when the appellant applied for a Private Rented Property Licence and 2021, when the appellant complied with safety standards, for example a builders' invoice to show the installation of fire doors. Of themselves they do not show when the C4 HMO use began but when read with the other evidence, they assist with confirming the appellant's version of events.
18. The Council have no evidence themselves to contradict the appellant. Rather their decision to refuse the application was based on their conclusion that the evidence was insufficient, in particular, that no tenancy agreements were provided to cover the period 2004-2016. The test for the evidence is "on the balance of probabilities", namely what is more likely than not. That balance of the evidence need only be slightly more than half in order to satisfy the test.
19. I accept there are no tenancy agreements for the period 2004-2016 but this overlooks the statements made in the statutory declarations by the occupiers of Flats 1 and 5. The Council criticise them as they are without specific dates but it is clear to me that they are honestly made and are not contrived in any way to suit the appellant's case.
20. I find it is more likely than not that the flat was bought as a rental and was used by usually groups of 3, and one occasion 4, individuals from 2001. I believe this use continued through to 2010 when it became classified as a C4 HMO use, as opposed to a C3 dwellinghouse use. The C4 HMO was lawful at this point and it did not matter how long that use had been going on to be lawful at that point. Having regard to the totality of the evidence, it is more than likely that this use continued until the Direction came into force and there is no evidence to the contrary. The implications of the Direction have had no effect on the lawful use of the flat as it was already a C4 HMO and this use continued to the date of the application and was not abandoned or lost before the date of the application.
21. In my view the appellant's evidence is sufficiently precise and unambiguous to support the C4 HMO use. The development is therefore lawful.

Conclusion

22. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the C4 HMO use 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.

D Fleming

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 29 June 2022 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the date on which the application was made, the use described in the First Schedule was an established lawful use that had not been supplanted or abandoned.

Signed

D Fleming

Inspector

Date: 18 November 2024
Reference: APP/U5930/X/23/3315007

First Schedule

Existing use of property as a house in multiple occupation (HMO)(Use Class C4).

Second Schedule

Land at Flat 6, Cedar Court, 267 Hainault Road, LONDON E11 1ET

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 18 November 2024

by D Fleming

Land at: Flat 6, Cedar Court, 267 Hainault Road, LONDON E11 1ET

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Scale: Not to Scale

