



Appeal Decision

by **D Fleming BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21st November 2024

Appeal Ref: APP/U5930/X/23/3315876

680 Forest Road, Walthamstow, LONDON E17 3ED

- 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 David Reid against the decision of Waltham Forest London Borough Council.
 - The application ref 221655, dated 7 June 2022, was refused by notice dated 10 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 described as "Use of the ground and first floor of the property as a house in multiple occupation for 5 persons and the use of the second floor of the property as a studio flat".
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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.

Applications for costs

2. An application for costs has been made by the appellant against the Council. This application will be the subject of a separate Decision.

Procedural Matters

3. 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.
4. 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.

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."

Preamble

5. The appeal relates to a two storey terraced property with a loft conversion. The ground and first floors are laid out as five rental rooms with a shared kitchen and bathrooms. The loft space, which is accessed via the same internal staircase as the first floor rooms, comprises a self-contained studio flat. The application form states the lawful use applied for falls within use class C4 Houses in multiple occupation (HMO) even though the accompanying statement presents the evidence as for two uses.
6. The Town and Country Planning (Use Classes) Order 1987 as amended (UCO) describes a Class C4 HMO as use of a dwellinghouse by not more than six residents as a "house in multiple occupation". The Interpretation of the description states that an HMO has the same meaning as in section 254 of the Housing Act 2004. S254 defines HMOs provided they meet the conditions in various tests.
7. I find the appeal site is a C4 HMO that meets the converted building test, based on the appellant's description. This is because it is a converted building and it contains one or more units of living accommodation that do not consist of a self-contained flat (whether or not it also contains any such flat or flats, as in this case). The living accommodation is also occupied by persons who do not form a single household and it is their only or main residence.
8. The appeal site has been used by 7 people. The description of Class C4 refers to the use being by not more than 6 residents. However, use by 7 occupiers would not necessarily mean the use no longer falls within C4. That depends on whether there has been a material change of use. The Council have not disputed this point as they take the view the property comprises two planning units comprising a self-contained flat and an HMO use on the ground and first floor.
9. This however fails to have regard to the definition of a HMO set out in the UCO and the physical relationship between the flat and the rooms on the ground and first floor, namely the shared access. I shall therefore proceed on the basis that the appellant is claiming lawfulness for a C4 HMO use for the whole property.

Main Issue

10. The main issue is whether the Council's decision was well-founded.
11. That turns on two requirements:
 - (i) Whether the appellant can demonstrate, on the balance of probabilities, that the change of use to a C4 HMO occurred before the Article 4 Direction (the Direction) came into effect on 16 September 2014. This removed a permitted development right to change the use of a dwelling house falling within Class C3 to one falling within Class C4; and
 - (ii) Whether the appellant can show that the C4 HMO use continued and was not abandoned or lost, until the date of the application, so as to be immune from enforcement action.

Reasons

Evidence

12. The appellant has submitted the following evidence:

- A statutory declaration;
- Affidavits from two former tenants;
- Tenancy agreement information for Rooms 1, 2, 3, 5 and "Furnished dwelling room" dated 12 February 2014, 1 November 2020, 8 May 2019, 1 November 2020, 4 November 2005, 10 September 2017 and 23 November 2014;
- Appellant's handwritten record of rent receipts;
- Extract from appellant's rent records;
- The Council Enforcement Officer's delegated report;
- Letter dated 17 March 2022 from the Council's Private Sector Housing & Licensing Team;
- Copies of two appeal decisions ref: APP/U5930/X/21/3268888 and APP/Z4310/X/22/3296202; and
- Copy of R(on the application of Ocado Retail Ltd) v Islington Borough Council [2021] EWHC 1509 (Admin).

Assessment

13. 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 in respect of either use. I shall now consider section 191(2)(a).
14. This is not the first time that the appellant has attempted to obtain a LDC for the claimed use. He made an application in November 2020 which was refused and dismissed on appeal on 1 October 2021 (Ref: APP/U5930/X/21/3268888). His current application provides more details to satisfy the requirement to submit evidence that is precise and unambiguous.
15. The current application is dated 7 June 2022 which means the relevant date to satisfy the time limits in section 171B of the 1990 Act is 7 June 2012. The application form states that the use began 31 May 2012 but the appellant's handwritten rent receipt records date back to 2007.
16. The rent receipt records clearly show that the appellant was receiving rent regularly for "Doors" 1-6 from February 2007. The records may be handwritten but they show the methodical thinking of the appellant. He owns several properties and one record column lists the house number of each property with the second column listing the door number (or room number) within the property. The months of the year are listed and ticks show whether the tenants paid each month. In some cases there are annotations to show

money owed and when it is paid but overall, it demonstrates the appellant's management of the appeal site until March 2022.

17. The rent receipt records show that the appeal site was used as a C4 HMO before the Direction came into force. The additional evidence from the tenancy agreements and former tenants' affidavits corroborate this. The agreement signed by ED on 12 February 2014 was for Room 1 and the shared parts are listed as kitchen, bathroom and dining room. The front page of the agreement for tenant MD (Room 5) shows the period of occupancy began 4 November 2005. Their affidavit states the property was laid out as an HMO with shared facilities and that they lived there until 28 February 2012. There is no tenancy agreement to accompany the affidavit made by the occupier of Room 4 but JC states they lived there from 4 October 2004 until 1 May 2007.
18. The earlier Town and Country Planning (General Permitted Development) Order 1995 (the GPDO)² was amended in 2010 to permit the change of use from a Class C3 Dwellinghouse to a Class C4 HMO. In order to benefit from this, the appellant has to show that the appeal site was in use as a dwelling. The definition of a dwelling prior to 2010 included use by a single person or by people living together as a family, or by not more than 6 residents living together as a single household.
19. On the evidence before me where there are a number of tenants who start and finish their tenancies at different points, I find that, it is more likely than not, that the property was not in a Class C3 use. Therefore, the change to a C4 HMO was not automatic in 2010.
20. Notwithstanding this, the evidence does show that an HMO use has been in existence since at least February 2007, if not before, and the remaining evidence of later tenancy agreements demonstrates that the use was not abandoned or lost up until the date of the application.
21. The appellant disputes the Council's weighing of the evidence in the Officer report as it ignores the findings of the enforcement officer investigations. There have been two previous complaints that were closed and the report summarises these as:

"Complaint received date 12/07/2005. Case relates to the conversion of house into bedsits without planning permission. Case notes dated 1/02/2006 state that no evidence of an extension or bedsit was found. Case closed 12/12/2009." And

"Complaint received date 12/05/2016. Case relates to the unauthorised use of the property as an HMO. Case notes dated 8/07/2016 state "Site visited and HMO inspected. 6 rooms found. Owner advised me that HMO has been in place at least since 2004. Business support officer provided documentation to show HMO been in place since March 2011. This has been in place prior to 16/09/2014 and is now immune from prosecution. No breach found." Case closed 7/07/2016."
22. The Council's findings in 2006 appear to contradict the appellant's evidence on occupancy at this point. Nevertheless, it is clear that 6 rooms were found in

² The 1995 GPDO was amended in 2010, when Class C4 HMO came into being, to allow a change of use from Class C3 dwellinghouses to Class C4 HMO. This was retained in the current 2015 GPDO.

2016 and that the Council had other evidence in house that the property had been an HMO since March 2011.

23. The Council have no other evidence themselves to contradict the appellant. Rather, their decision to refuse the application was based on their conclusion that the evidence was insufficient and unclear. 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.
24. I have given more weight to the appellant's handwritten rent records than the Council, who seem to require a more formal document for proof of occupancy. Evidence in LDC applications and appeals can take many forms and the personal nature of the rent records should not be set aside or given less weight just because they are handwritten.
25. In conclusion, and as a matter of fact and degree, I find, having regard to the totality of the evidence, it is more likely than not, that the C4 HMO use began in 2007, if not before, and has continued until the date of the application, which is more than 10 years. It is therefore immune from enforcement action. In my view the appellant's evidence is sufficiently precise and unambiguous to support the C4 HMO use and it follows that the development is therefore lawful.

Conclusion

26. 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 7 June 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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: []

Reference: APP/U5930/X/23/3315876

First Schedule

Use of the ground and first floor of the property as a house in multiple occupation for five persons and the use of the second floor of the property as a studio flat, which together comprise a Class C4 HMO use.

Second Schedule

Land at 680 Forest Road, LONDON E17 3ED

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: []

by D Fleming

Land at: 680 Forest Road, LONDON E17 3ED

Reference: APP/U5930/X/23/3315876

Scale: Not to Scale

