



Appeal Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2024

Appeal Ref: APP/U5930/X/24/3341527

16 Copeland Road, Walthamstow E17 9DB

- 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 Arfan Rahman against the decision of Waltham Forest London Borough Council.
 - The application ref 231340, dated 9 July 2023, was refused by notice dated 11 January 2024.
 - 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 'Lawful Development Certificate (Existing) - Use of property as an 8-bedroom House of Multiple Occupants-HMO (Sui Generis)'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of the use in the heading above is taken from the Council's decision notice and the appeal form. The application form has a different, much lengthier, and rather unclear description. From all the information before me, it appears that what the appellant sought, and what the Council determined, is best described as 'use as an 8-bedroom House in Multiple Occupation (Sui Generis)', and I have considered the appeal on that basis. Although the Council's statement refers to a Use Class C4 HMO, that appears to be in error and does not reflect how the Council approached the application.
3. It does not appear that the appellant seeks a certificate specifying a particular number of occupants. However, an HMO for 6 residents or fewer would have fallen within Use Class C4, whereas the application identified this as a *sui generis* use, implying occupation by more than 6 people. That is reinforced by the reference to 8 bedrooms.

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 balance of probability, the use applied for had taken place for a sufficient continuous period such that it was lawful on the day the application was made.

Reasons

The appeal property

5. The appeal property is a house containing 8 bedrooms, as shown on the submitted floor plan. The Council officer's report confirms that the property was laid out in accordance with the floor plan when it was inspected in September 2023.

General approach to LDCs

6. Advice relating to LDCs is provided by the Government's Planning Practice Guidance (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, 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. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits are not relevant.

The requirements to establish lawfulness in this case

7. Section 191(2) of the Act states that:

For the purposes of this Act uses and operations 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.

8. There was no enforcement notice in force when the LDC application was made, so my decision hinges solely on s191(2)(a).
9. Section 171B of the Act sets out time limits for enforcement action. In this case, the relevant period is (and was at the time of the application) the 10 years specified in s171B(3) for 'any other breach of planning control'. The appellant refers to both a 10-year period and a 4-year period. However, the latter appears based on an incorrect belief that an HMO is a Class C3 dwellinghouse use. The application form, appeal form and decision notice all correctly identify this as a *sui generis* use, meaning that it does not fall within a use class.
10. The Council refers to an Article 4 Direction that restricts changes of use to small HMOs falling within Class C4 of the Use Classes Order. However, that is not relevant to this case, which concerns an 8-bedroom HMO and where there is no claim from the appellant that it falls within Class C4.
11. Thus, to acquire immunity from enforcement action and therefore lawfulness, the use would have needed to have carried on for a continuous 10-year period prior to the LDC application. It is for the appellant to show this, on the balance of probability.

Assessment

12. The appellant has not provided any clear documentary evidence of use as an 8-bedroom HMO. The appellant refers to a 2004 letter from Forest Care Services, but I have not been provided with a copy of this and have little detail of what it said about how the property was used.
13. I am told that the property is currently listed as an HMO for Council Tax purposes, and has been since May 2019. The Council confirms this. However, that does not show use for a continuous 10-year period. The appellant also refers to historic enforcement action at the property relating to an extension, but the relevance of this is not explained.
14. Furthermore, the Council has provided an extract from a planning application form¹ in which the property is said to fall within Use Class C3, which is use as a dwellinghouse. This is incompatible with the claim of an HMO use; it is clear from *The Town and Country Planning (Use Classes) Order 1987* (as amended) that Class C3 does not include HMOs². Of course, the reference to Class C3 could have been an error on the part of the applicant. However, it seems that the Council also believed the property to be in use as a family dwellinghouse at that time, since one of the reasons for refusal of that application, issued in 2021, was given as 'the proposed development would result in the loss of a single-family dwelling house within a Restricted Conversion Ward (Hoe Street) and it is therefore in principle unacceptable'. There is no indication that the decision was appealed or otherwise challenged and I have no reason to believe that it was flawed.
15. The appellant sets out the benefits of the use and refers to various development plan policies, but such matters are not relevant to a determination under s191 of the Act or any related appeal. I have been referred to an example of an LDC being granted for an HMO elsewhere, but that says nothing about whether lawfulness has been demonstrated in this instance. I have also been provided with details of what appears to be planning permission for an extension to an HMO, but the relevance of that to this appeal is not clear.
16. Taken as a whole, there is no adequate evidence to show continuous use as an 8-bedroom HMO for a 10-year period. There is also evidence that contradicts the appellant's claim. Thus, it has not been demonstrated, on the balance of probability, that the use was lawful when the application was made.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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) and dismiss the appeal.

Peter Willows

INSPECTOR

¹ Application reference 212436

² There is a separate Use Class – C4 – for certain HMOs