



Appeal Decision

Site visit made on 30 January 2025

by **John Whalley**

an Inspector appointed by the Secretary of State

Decision date: 10th February 2025

APP/C5690/X/24/3348008

143 Hazelbank Road, London SE6 1LT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal by the London Borough Council of Lewisham to grant a certificate of lawful use or development.
- The appeal was made by Mrs Anita Schlesinger.
- The application, reference DC/24/134703 dated 1 February 2024, was refused by a notice issued on 28 March 2024.
- The Application for a Certificate of Existing Lawful Development was made under section 191(1)(a) of the Act for use of No. 143 Hazelbank Road, London SE6 1LT as a House of Multiple Occupation for 3-6 persons, (Use Class C4).

Summary of decision: The appeal is not allowed. A certificate of lawful use or development is not issued.

Appeal property

1. The appeal property, No. 143 Hazelbank Road, is a 2 storey semi-detached residential property in a long row of similar houses. During my visit, I saw that the accommodation on the ground floor was: 2 bedrooms, each with a separate, small shower, wash basin and w.c. room, apparently occupied by a tenant and a separate kitchen room. A section of the ground floor to the southern side of the house was locked, denying access. That section is shown on the LDC application plan as having a communal room, a kitchen, an office room and a w.c. The Council said those rooms were vacant at the time of an Officer's visit on 24 March 2024. No evidence of the use of this section of the ground floor was produced. There were 4 bedrooms, each with a separate shower, wash basin and w.c. on the first floor. All rooms were let.

Considerations

2. Section 254 of the Housing Act 2004 headed Meaning of "house in multiple occupation" says at (1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" then lists the conditions required to pass, amongst others, the 'standard test', (s.254(2) (a) to (f)).
3. The gov.uk/private-renting/houses-in-multiple-occupation web site headed: Houses in multiple occupation says: 'Your home is a house in multiple occupation (HMO) if both of the following apply: at least 3 tenants live there, forming more than 1 household - you share toilet, bathroom or kitchen facilities with other tenants.'. In the present instance, the s.254(2) tests are met, including that of (f) - *two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities*, where only the kitchen and laundry facilities were to be shared. As the Council said, only permanently fixed cooking equipment would be required in each room to constitute self-containment. It was nevertheless evident that some tenants do some cooking in their bedrooms. That

some choose a degree of self-containment seemed confirmed by no evidence of use of the kitchen at the time of my visit.

House in Multiple Occupation (HMO) - Article 4 Direction

4. From 1 October 2010 a change of use from a single family dwelling (C3) (Town and Country (Use Classes) Order 1987), use to use as a House in Multiple Occupation (HMO) (C4) does not require planning permission, (Communities and Local Government Circular 08/2010). That amendment to the Order was set out at Schedule 2, Part 3, Class L. However, on 19 January 2024 Lewisham Council brought into effect a Borough-wide Article 4.(1) Direction to remove permitted development rights for the conversion of single dwellinghouses into small HMOs, (C3 dwellinghouse to a C4 small HMO). Dwellings that were lawful 3 – 6 person HMOs before 19 January 2024 are not caught by the Direction.

Considerations

5. S.191(1) of the Act provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; they may make an application for the purpose to the Local Planning Authority. Where that application is refused and an appeal against that decision is made, the burden of proof to show that the decision was not well founded lies with the appellant.
6. The purpose of the LDC provisions is to enable the making of an objective decision based on the best facts and evidence available when the decision is taken. Evidence should not be rejected simply because it is uncorroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted, (*Gabbitts v SSE & Newham BC [1985] JPL 630*, also see *Ravensdale Ltd v SSCLG*, and *Para 006 NPPF - Planning practice guidance*).
7. The Appellant said the Council officer's report was confirmation that 6 bedrooms were occupied by individual tenants. That aligned with the definition of an HMO under Use Class C4. She also pointed out that potential for additional occupancy of vacant rooms was speculative and did not alter the claimed existing lawful use at the time of the Council inspection in March 2024.
8. I consider that there does remain some concern, however, in relation to the asserted C4 use of No. 143 at the time of application. It was made under section 191(1)(a) of the Act for use of No. 143 Hazelbank Road, London SE6 1LT as a House of Multiple Occupation for 3 - 6 persons, (Use Class C4). That is, the entire house. Although a C4 use can take place in part of a building, that is not what the application asks. The presence of a locked door to 3 unused rooms, as shown on the application plans as, at least in part, facilities to be shared by the tenants of the 6 bedrooms, is unexplained, leaving doubt as to what the certificate for lawfulness seeks to confirm. As the Council pointed out, following an inspection at the time of an earlier planning application, the "office" contains a bathroom, as does the "communal living" room. It is not speculative as to the use to consider that No. 143 appears to be set up as a large, (more than 6 tenants), HMO, a sui generis, (of its own kind), use that would require planning permission.
9. There are other matters that obfuscate rather than clarify the history of the use of the appeal property. The 9 September 2024 planning application for the conversion of what is described as a dwelling at No. 143 into 2 self-contained flats also confusingly refers to a C4 use. The tenancy agreements submitted in support of a C4 HMO use contain Clause 1.5.2 which states: "The Property is not let as a House in Multiple Occupation within the meaning of the Housing Act 2004. The Property does not

require the Landlord to hold a licence to be able to let it lawfully. The Tenant agrees not to use the Property in any way that changes either of these facts.”. It may be the clause was left in to delay or avoid the need for a licence, required for an HMO if it is occupied by 5 or more people. However, lesser weight may be afforded to evidence that now testifies to something different than put forward earlier.

10. It was necessary for the Applicant to show that No. 143 Hazelbank Road was in a lawful C4 use at the time of the coming into effect of the Article 4 direction by 19 January 2024, the date of the Article 4 Direction and had continued without reversion to a single residential dwelling or other change of use up to the date of the s.191 application, reference DC/24/134703 dated 1 February 2024. The evidence provided does not, in my view show, on the balance of probabilities, that the property was in operation as a lawful Class C4 HMO prior to 19 January 2024.
11. National Planning Policy Guidance requires evidence to be precise and unambiguous. In the present instance the evidence provided does not meet such criteria and the evidence for existing use is considered not to satisfy the provisions of Section 191(2)(a) read with Section 171B(3) of the Act.

FORMAL DECISION

12. For the reasons given above, I conclude the Council's refusal to grant a certificate of lawful development for the use of No. 143 Hazelbank Road, London SE6 1LT as a House of Multiple Occupation for 3 - 6 persons, (Use Class C4), was well founded and that the appeal should not succeed. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly.

John Whalley

INSPECTOR