



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/24/3348193

86 Doggett Road, London SE6 4QA

- 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/24/134515 dated 18 January 2024, was refused by a notice issued on 1 May 2024.
- The Application for a Certificate of Existing Lawful Development was made under section 191(1)(a) of the Act for use of 86 Doggett Road, London SE6 2QA 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. 86 Doggett Road, is a 2 storey mid-terrace residential property in a row of similar houses. As my appeal site visit was unaccompanied, I did not enter the house. An existing layout plan shows a lounge, kitchen, family room and a bathroom on the ground floor; 3 rooms described as Units 1 – 3 and a bathroom on the first floor; Attic areas 01 and 02 are shown for the attic floor.

House in Multiple Occupation (HMO) - Article 4 Direction

2. 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 to be caught by the Direction.

Considerations

3. 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.
4. 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, (*Gabbitas v SSE & Newham BC [1985] JPL 630*, also see *Ravensdale Ltd v SSCLG*, and *Para 006 NPPF - Planning practice guidance*).

5. On behalf of the Applicant, Mrs. Schlesinger, it was said she converted the property at No. 86 Doggett Road from a Class C3 dwellinghouse to a Class C4 small HMO before the Article 4 direction came into force. The application for a Lawful Development Certificate (LDC) sought to confirm that change of use was lawful at the time it was made, based upon the permitted development rights in place before 19 January 2024.
6. Three Assured Tenancy Agreements dated 4 December 2023 were submitted for rooms 1, 2 and 3 at No. 86 Doggett Road. All contained clause 1.5.2 that said: '*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.*'. The Applicant said that was a standard clause in many residential tenancy agreements, often included to prevent subletting by tenants and to ensure that tenants do not engage in activities that would breach their tenancy agreement. Mrs. Schlesinger claimed it has no significance in relation to the lawful use of the property, even though it states: 'The property is not let as a House in Multiple Occupation.'.
7. A record of payments of £1950 on 2 and 9 January 2024 in the names of Gerald Tinglin and V Tinglin respectively was provided. That figure could be the result of adding the £650 rental for each of the 3 tenants. But that was not shown. It did not refer to any of the tenants nor the landlord as shown on the tenancy agreements. Nor were there any corroborating statements from tenants of No. 86 Doggett Road that should have been available. The tenancy agreements provided do not demonstrate that the entire property was in lawful use as a House in Multiple Occupation (HMO) Use Class C4 before 19 January 2024.
8. This application was unusual as it appears that no Council officer went inside No. 86 in order to inspect the property at any time during the processing of the application and subsequent appeal. Where there is a long and consistent history of a use, backed up by documentary evidence and, for example, sworn statements, site visits might be less than essential. Here, however, the lack of an official site inspection does nothing to help fill the apparent gap in information needed to substantiate the assertion that a material change of use of the dwelling to a C43 use at No. 86 took place before the Article 4 Direction came into force.
9. National Planning Policy Guidance requires evidence to be precise and unambiguous. In the present instance the evidence provided does not meet those criteria and the evidence for existing use is not considered to satisfy the provisions of Section 191(2)(a) read with Section 171B(3) of the Act. In my view, the Council reasonably concluded, on the balance of probabilities, that a C4 use of the property at No. 49 Rosenthal Road had not been demonstrated.

FORMAL DECISION

10. For the reasons given above, I conclude the Council's refusal to grant a certificate of lawful development for the use of No. 86 Doggett Road, London SE6 2QA as a House of Multiple Occupation for 3-6 persons, (Use Class C4), was well founded and that the appeal should fail. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly.

John Whalley

INSPECTOR