



## Appeal Decision

Site visit made on 30 January 2025

by **John Whalley**

an Inspector appointed by the Secretary of State

Decision date: 10<sup>th</sup> February 2025

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### APP/C5690/X/24/3348100

#### 106 Ringstead Road, London SE6 2BS

- 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 of Lewisham Council to grant a certificate of lawful use or development.
- The appeal was made by Mrs Anita Schlesinger.
- The application, reference DC/24/135359 dated 25 March 2024, was refused by a notice issued on 4 June 2024.
- The Application for a Certificate of Existing Lawful Development was made under section 191(1)(a) of the Act for use of No. 106 Ringstead Road, London SE6 2BS 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.**

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### Appeal property

1. The appeal property, No. 106 Ringstead Road, is a 2 storey mid-terrace residential property in a row of similar houses. It also has accommodation in the basement and within the roof, extending to 4 floors in all. At the time of my visit the large basement room, described on the application plan as a communal room, appeared unused, as was the remainder of the basement including its en-suite shower and w.c. room. There were 2 en-suite bedrooms, a kitchen and an empty room on the ground floor. There was another empty room, a bedroom and a separate bathroom on the first floor, (described on the application plan as the lower second floor). There were 2 bedrooms on the attic floor, (described as the second 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 caught by the Direction.

### S.191(1) of the Act – C4 HMO use

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, (*Gabbitts v SSE & Newham BC* [1985] JPL 630, also see *Ravensdale Ltd v SSCLG*, and *Para 006 NPPF - Planning practice guidance*).
5. It was necessary for the Applicant to show that No. 106 Ringstead Road was in a lawful C4 HMO use at the time of the coming into force of the Article 4 Direction by 19 January 2024 and had continued without reversion to a single residential dwelling or other change of use up to the date of the s.191 application,

## Considerations

6. There are several matters that support the Appellant. It was pointed out that the Council accepted that an HMO license application for 6 tenants to occupy the dwelling at No. 106 was submitted in October 2023. That was prior to the coming into force of the Article 4(1) 2023 Direction on 19 January 2024. It demonstrated the landlord's intent to operate the property as an HMO in compliance with regulatory requirements. It was asserted that the property was already in use as an HMO. The application's intention was to formalise the use.
7. Second, copies of 3 assured shorthold tenancy agreements were submitted in support of the application. All were dated 27 November 2023, again prior to the Direction coming into force. Also, the Council's own site visit confirmed the layout and use of the property as an HMO, aligning with the license application and reinforcing the Appellant's case.
8. A Council visit to No. 106 on 13 March 2024 showed that the submitted existing plans reflected the layout of the property, apart from the second bathroom at lower second floor level, which was empty and had no sanitary facilities. Even if that formed a bedroom, the property would comprise 6 bedrooms, falling under the definition of a small HMO. Rooms were occupied by people living permanently on the premises.
9. In my view, however, there were deficiencies and uncertainties that, on present evidence, a lawful C4 HMO use has not, on the balance of probabilities, been shown. One difficulty arises in the tenancy agreements' 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.*".
10. The Appellant said Clause 1.5.2 was a contractual matter. It had no bearing on the planning classification of the property. The planning system prioritized factual use over contractual ambiguities, as established in *Gabriel v. Secretary of State for the Environment* [1996]. That is so. But the 1.5.2 clause deals directly with the use of the property, the essence of the considerations before me. It may be the clause was simply left in inadvertently. But the tenancy agreements are legal documents of consequence, drawn up by professional representatives. The weight to be afforded to evidence that now testifies to something different than drawn up earlier may be diminished.
11. Another problem not fully addressed by the Appellant was that although bank statements were submitted, purporting to show tenants' rent payments, the one record of payment dated 10 January 2024 in the name of Gerald Tinglin did not, as the Council pointed out, match those of any of the tenants nor the landlord listed on the

tenancy agreements. There were no corroborating statements from any of the tenants of, for instance, the start of their occupation of No. 106.

12. In conclusion, I agree with the Council that with insufficient details and discrepancies in the evidence provided, when considered on balance, it is not sufficiently robust to conclude that a lawful use as an HMO at No. 106 Ringstead Road was operational prior to 19 January 2024, the day the Borough-wide Article 4 HMO direction came into force.

### **FORMAL DECISION**

13. For the reasons given above, I find the Council's refusal to grant a certificate of lawful development for the use of No. 106 Ringstead Road, London SE6 2BS 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