



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/24/3352531

49 Rosenthal Road, London SE6 2BX

- 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/24/134570 dated 22 January 2024, was refused by a notice issued on 19 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. 49 Rosenthal Road, London SE6 2BX 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. 49 Rosenthal Road, is a 2 storey semi-detached house with a second floor dormer window in the hipped roof in a residential road of similar properties.

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), 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, (*Gabbitts v*

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

5. The Appellant said the Council's decision to refuse to issue an LDC was based upon a misinterpretation of the evidence submitted, a misunderstanding of standard practices in HMO management and an erroneous assessment of the balance of probability test. There were 5 matters of concern with the Council's refusal:
 - Misinterpretation of the Tenancy Agreements (ASTs).
 - Disregard of the long-standing HMO Licence issued in 2014.
 - Misunderstanding of payment evidence and standard HMO practices.
 - Speculative concerns about future use based on the officer's site visit findings.
 - Failure to apply the "balance of probability" test correctly.
6. Tenancy agreements dated 4 of December 2023 were submitted for rooms 1, 2 and 3 at No. 49 Rosenthal 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 Appellant 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. My view is that as useful as it may be in that regard and that the clause was said to have no significance in relation to the lawful use of the property, it does specifically state: 'The property is not let as a House in Multiple Occupation.'
7. The Council confirmed that the application site has had an HMO Licence since 2014. That appears to be a point in support of the Appellant's case, although it does not describe the actual use of No. 49 on the date of application for an HMO C4 use. History of the use of No. 49 in the intervening period was scant.
8. A record of payments of £1950 on 2 and 10 January 2024 in the name of Gerald Tinglin was provided. That figure may be the result of adding the £650 rental for each of the 3 tenants at No. 49, but that was not shown. It did not mention any of the tenants nor the landlord as shown on the tenancy agreements. Nor were there any corroborating statements from tenants of No. 49 that might have been available. Although the Appellant said the tenancy agreements provided were for three separate rooms, it does not demonstrate that the entire property was in lawful use as a House in Multiple Occupation (HMO) Use Class C4 before 19 January 2024.
9. I agree with the Appellant that any speculation about future use is misplaced when determining the lawfulness of an existing use. That is, even where ongoing physical alternations might appear to indicate suitability for another, possibly unlawful future use. The matter that concerned the Council, following an officer visit on 13 March 2024, was that whilst existing layout drawings dated 17 January 2024 showed 6 ensuite bedrooms, the ground floor living/dining/kitchen room shown on those plans was divided into 2 separate rooms, one being ensuite. Also, the study room included a WC and small kitchenette, with a sink and cupboard. Dates for that extra work were not given, but if the layout seen on 13 March was as that existing when the LDC application was made, it would not be unreasonable for the Council to have thought they were looking at a large HMO layout.
10. The fact that works were at that time ongoing does add further uncertainty to whether it could be concluded that a lawful C4 use was taking place at the time of the LDC application.

11. National Planning Policy Guidance requires evidence to be precise and unambiguous. In the present instance the evidence provided does meet those criteria and the evidence for existing use is considered to not satisfy the provisions of Section 191(2)(a) read with Section 171B(3) of the Act.
12. 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

13. For the reasons given above, I conclude the Council's refusal to grant a certificate of lawful development for the use of No. 49 Rosenthal Road, London SE6 2BX 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