Planning Inspectorate

Appeal Decision

Inquiry held on 11 and 12 March 2025

Site visit made on 12 March 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19 March 2025

Appeal Ref: APP/C5690/X/24/3355497
9 Ellerdale Street, London SE13 7JX

- 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 Yuda Stroli against the decision of the Council of the London Borough of Lewisham.
- The application ref DC/24/136937, dated 30 July 2024, was refused by notice dated 25 September 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 in the application as "*property in use as an HMO before article 4 came into effect*".

Summary Decision: The appeal is dismissed.

Applications for Costs

1. Both main parties made costs applications during the inquiry which are dealt with in separate decision notices.

Background

2. On the 19 January 2024, the Council implemented an Article 4 Direction which removed permitted development rights allowing for a material change of use (MCU) from a dwelling in C3 use to a small House in Multiple Occupation (HMO) in C4 use.

3. The appellant says a MCU of the appeal property from a dwelling to a small HMO occurred prior to 19 January 2024, when the Article 4 Direction came into effect. The appellant therefore says the MCU was lawful, and remains so. Whilst the Council does not dispute that a MCU has occurred, they say the evidence is insufficient to demonstrate it occurred prior to implementation of the Article 4 Direction.

4. As the appeal concerns a Lawful Development Certificate (LDC), the burden is on the appellant to demonstrate their case, on the balance of probability. The key date for determination of lawful use is the date of application, which was 30 July 2024.

Main Issue

5. In this context, the sole main issue is whether a MCU of the appeal property, from a C3 dwelling to a small HMO (for up to 6 people), occurred prior to implementation of the Article 4 Direction on 19 January 2024.

Reasons

6. The appellant acquired the property on 30 November 2023. Upon purchase, the appellant appointed Quate Developments Ltd to carry out various renovation works to facilitate the conversion of the property from a dwelling to an HMO. Mr Sternlicht of Quate said these works included an extension, the insertion of rear dormers, internal modifications and decoration. The appellant says “most” of these works were complete by the end of the December 2023.

7. Holmleigh Homes (HH) was appointed by the appellant as managing agent for the appeal property. During evidence, Mr Liss said that six tenants were signed up by HH between the 2 – 4 January 2024. He said the tenants were given keys and were entitled to reside in the property from this date, which reflects the date of the tenancy agreements submitted.

8. In themselves, the tenancy agreements are insufficient to demonstrate the property was being used as an HMO prior to the Article 4 Direction coming into effect. Instead, the agreements just show the named tenants were entitled to occupy the premises. To confirm actual use of the property at the relevant date, further evidence would be needed to demonstrate the named tenants went on to reside in the property on the date claimed.

9. The appellant has submitted accounting information, which suggests a payment relating to the property was received by the appellant from HH on 17 January 2024. However, there is little evidence of any direct rental payments from the tenants themselves, whether to HH or otherwise. This is a notable gap in the appellant’s evidence, particularly in the context of certain anomalies with the accounting data submitted. For example, the January statement from HH differs significantly in format and content from later statements. Unlike later months, the statement is also undated, and shows no commission to HH being deducted. These discrepancies were not explained, which casts doubt over the credibility of the January accounting information.

10. A safety inspection of the appeal property was carried out on 18 January 2024 by Mr Demirci of Dunwoody Building Legislation. The inspection report confirms that structural works carried out at the property had been completed in compliance with Building Regulations, and that the property was safe to reside in on the date of inspection. However, notwithstanding that the report says Mr Demirci “*met tenant on site*”, the report does not confirm the property was occupied by tenants as an HMO, nor that it was ready for occupation, particularly in terms of décor and/or furnishings. In itself, the report is therefore insufficient to demonstrate actual use of the property as an HMO on the date of inspection.

11. Owing to these factors, the appellant’s evidence is ambiguous and lacks sufficient clarity in terms of when use of the property as an HMO began. This uncertainty is problematic, as evidence from neighbours presents a different timeline of occupation.

12. A photo dated 12 January 2024 shows the frontage of the appeal property surrounded by scaffolding and construction hoarding. There are danger warnings shown across this hoarding, which is indicative of the site being unsafe at this time. Noting the photo pre dates the building safety inspection on 18 January, it seems unlikely that HH, a managing agent of between 2000 – 3000 properties in London, would knowingly have allowed tenants to occupy the property in this state.

As highlighted by Mr Liss, HH faces significant liability under housing legislation when contracting with tenants, which would invariably encompass matters of building safety.

13. A photo dated 18 January 2024 also shows the rear of the property with scaffolding still up, and windows in the new rear dormer yet to be fitted. This suggests the property was still not ready for occupation at this date.

14. Mr Cummings (no. 11), who gave evidence on oath, was invited to see the inside of the appeal property on 3 February 2024 by someone apparently working on site. Mr Cummings said he went into every room of the appeal property during this visit, and saw no evidence of anyone living there. Consistent with the photos submitted, the testimony of Mr Cummings, who was a credible witness, is a strong indication that the property was not occupied as an HMO in early January 2024, as alleged by the appellant.

15. There is an invoice for a furniture consignment relating to the appeal property attached to the April accounts information from HH. The invoice, which is dated 5 February 2024, relates to the purchase of 6 x bed frames, 6 x mattresses, 6 x wardrobes, 6 x under-counter fridges, a washing machine and a large fridge freezer. It is not disputed that this furniture was acquired for the purpose of the property being used as an HMO.

16. Mr Liss said it is common for HH to be invoiced for furniture later than it is delivered. Whilst this may well be the case, a photo taken by Mr Cummings on 30 January 2024 appears to show a large fridge freezer being delivered to the appeal property. It is reasonable to infer that this delivery relates to the same furniture consignment shown on the February invoice. If that is correct, the furniture consignment, or at least part of it, was not delivered to the property until weeks after the tenancies supposedly began. Noting that the property was said to have been let on a furnished basis, this again suggests the property was not ready for occupation as an HMO at the beginning of January, as stated by the appellant.

17. There are other anomalies that cast doubt over the veracity of the appellant's case. During the inquiry, Mr Liss initially said the tenants were not shown around the appeal property before they signed up. He also said no marketing material had been prepared. However, he later said that HH held an open house viewing for prospective tenants on 2 January 2024, at which point a number of tenants signed up to tenancies. Notwithstanding the inconsistency in Mr Liss' testimony (which remains unexplained), it is difficult to envisage an open house viewing being held at the property when construction works were still ongoing, noting the construction hoarding shown around the property just over a week later.

18. Mr Liss went on to say that management of the appeal property was taken over by Housing Action Management Limited (HAML) on 6 February 2024 under a rent guarantee agreement. At this point, he said the residing tenants were placed in alternative accommodation. Mr Liss said he had no knowledge of who was in occupation of the appeal property beyond this date. Details of this arrangement with HAML remain vague and unclear, which casts further uncertainty over the basis of the property's occupation. It also means that the basis of the property's occupation on the 30 July 2024, which is the critical date for determination of lawful use, is entirely unclear. This is a fundamental flaw in the appellant's case.

19. During the Inquiry, Mr Leibowitz repeatedly said it would have been an offence for the property to be occupied as an HMO without first obtaining an HMO licence. Yet the HMO licence application was not submitted to the Council until 18 January 2024. If the property was occupied as an HMO from 2 January 2024 as alleged, the property would have been unlicensed at this time. Whilst not determinative in itself, this factor raises further doubt in respect of the appellant's timeline of occupation.

20. Overall, the appellant's evidence is significantly lacking in precision and certainty in terms of when the HMO use began. There is also compelling evidence which suggests a very different timeline of occupation than alleged by the appellant. Together, this means the appellant has not demonstrated, on the balance of probability, that the material change of use of the appeal property from a dwelling in C3 use to a HMO in C4 use, occurred prior to implementation of the Article 4 Direction on 19 January 2024. Given planning permission was not subsequently obtained, use of the property as a small HMO was therefore not lawful on the date of application.

Other

21. The appellant suggests that the date of the photographs taken by Mr Cummings may have been falsified. However, there is no evidence before me to indicate that is the case. Even so, the lack of precision and ambiguity with regard to the appellant's case means the appeal would have failed even without these photos.

Conclusion

22. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for an HMO use is 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).

Formal Decision

23. The appeal is dismissed.

Mr James Blackwell

INSPECTOR

DOCUMENTS SUBMITTED AT INQUIRY

Council Opening Statement
Council Closing Statement
Appellant Closing Statement

APPEARANCES

FOR THE APPELLANT:

Isaac Leibowitz
Yuda Stroli
Jack Liss
Dov Sternlicht
Sruly Grohman

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Whale (Landmark Chambers)
Thomas Simnett
Fiona Shanahan

INTERESTED PARTIES:

Adam Cummings