



Appeal Decision

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 01 August 2025

Appeal Ref: APP/U5930/X/24/3337050

173 Shernhall Street, Waltham Forest, Walthamstow, E17 9HX

- 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 Mrs Abaida Mahmood against the decision of Waltham Forest London Borough Council.
 - The application Ref 231606, dated 28 June 2023, was refused by a notice dated 29 September 2023.
 - 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 use of the property as a small house in multiple occupation (HMO) (Use Class C4).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Considering the matters at appeal it was not necessary to visit the appeal premises. I have therefore made my decision based on the representations and supporting information submitted by the main parties as a matter of course as part of the application and appeal process.
3. Section 194(4) of the Town and Country Planning Act 1990, as amended (the Act), indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal.

Main Issue

4. In order for a lawful use or development certificate (LDC) to be granted under section 191 of the Act, the burden of providing relevant facts in this appeal rests on the appellant, and the test of the evidence is the balance of probability. If there is no evidence to contradict or make the appellant's version of events less than probable, and the appellant's evidence alone is sufficiently precise and unambiguous, a LDC should be granted.
5. The main issue is whether the Council's decision to refuse to grant a LDC was well founded. That turns on whether the appellant can demonstrate, on the balance of probabilities, that the change of use to a small house in multiple occupation (HMO) took place prior to the Council's introduction of an Article 4 Direction which came into force on 16 September 2014 and there has been no subsequent change of use since that use became lawful. The Article 4 Direction under the Town and

Country Planning (General Permitted Development) (England) Order, 1995, as amended (GPDO), directed that permission granted by Article 3 of the GPDO shall not apply to development consisting of a change of use of a building to a use falling within Class C4 (HMO) from a use falling within Class C3 (dwellinghouses). The relevant date in this instance is therefore 15 September 2014.

Summary of Cases

6. The appellant maintains that the property has been in continual use as a small HMO (Class C4) since May 2010. Evidence includes: floor plans; statutory declarations from the appellant and from Nina Choudhary of Real Life; sworn statement and letter from Director of Let Sell Property Ltd (estate agents); private rental property licence; HMO insurance; HMO licence; tenancy agreements; Council post inspection letter; and bank statements.
7. The Council do not consider the evidence submitted to be sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the property was occupied as an HMO prior to 15 September 2014 and continued to be occupied on that basis.

Reasons

8. The Town and Country Planning (Use Classes) Order 1987, as amended (UCO), states that for the purposes of Class C4 a “house in multiple occupation” does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004. Class C4 of the UCO provides for the use of a dwellinghouse as an HMO by not more than six residents: that is up to six unrelated individuals who share basic amenities.
9. Floor plans submitted with the application show a ground floor kitchen and separate utility room, six bedrooms over the two floors, including one with an en-suite bathroom; a separate downstairs toilet; and a first floor bathroom. It is understood from the Statutory Declarations (SD) of Nina Chaudhary, Managing Director of Real Life and the appellant, that Real Life took lease of the property on 6 May 2010 on an Assured Shorthold Tenancy (AST) basis and that AST remained in place until 4 September 2017. A copy of the AST and the notice to vacate the property are appended to the SD of Nina Chaudhary.
10. Nina Chaudhary confirms in her SD that during the first three years of Real Life’s lease, they provided accommodation for four/five young adults aged 16 plus, providing them with accommodation and support to prepare them for future independent living. The occupants were unrelated. Over the remaining four years of the tenancy period the service was changed to provide accommodation, supervision and support for mothers and babies. All individuals were placed by local authorities and the four mothers and babies occupied individual rooms with the use of communal facilities.
11. I do not dispute that during the period when Real Life leased the property (2010 – 2017), the rooms were occupied by unrelated individuals. However, the property was in the sole tenancy of Real Life. Indeed, the AST at Paragraph 3 requires the property to be occupied by an Approved Employee (and his family) of the company, or group of employees of the company, whom has previously been approved in writing with the Landlord. Furthermore, paragraph 3.12 advises that

the property should not be sublet, or assigned or let to any other person, only an Approved Employee. Thus, it is not clear what the arrangements were between Real Life and the various local authorities who provided placement of the occupiers. No substantive evidence has been provided of the actual occupants, when they occupied the property, nor indeed how they occupied the premises and were supported during their stay. For example, did the occupiers support each other, as would be the case in a single household, and what support/care arrangements were in place? Real Life advise that during their tenancy the property was occupied by four or five persons (not including any dependent children/babies). Thus, was the current sixth bedroom previously used as a communal living room, where occupants could support each other? The SD confirms that Real Life were supporting the occupants for **future**¹ independent living. However, the details of how those individuals were supported during their occupation of the property has not been provided, and thus the evidence is not sufficiently precise to demonstrate that the occupants were not living together as a single household where care is provided. There is no substantive evidence to demonstrate that the property was occupied as an HMO during Real Life's occupation of the property and that its use was not a use falling within Class C3 (b) or Class C3 (c) of the UCO.

12. The Private Rented Property Licence was granted on 1 October 2015 and thus after the relevant date. Similarly, the HMO licence is dated 23 March 2023 and HMO Insurance details are dated June 2023. Again, both documents do not provide evidence of use as an HMO prior to the relevant date, 15 September 2014.
13. Overall, therefore, I consider that whilst the Council do not have any information that would contradict the appellant and Nina Chaudhary's version of events, the information submitted with the LDC application in relation to the use of the property by Real Life between 2010 and September 2017, is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the property was in use as an HMO (Class C4) during that time, and thus prior to 15 September 2014. Considering my finding on that period of occupation, it is not necessary for me to consider the additional information submitted which related to the property's use post September 2017, which when considered alone (6 years between 2017 and 2023) would not provide sufficient evidence to demonstrate the 10 years necessary to provide immunity from enforcement action.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use as a small house in multiple occupation (Class C4) was 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.

Elizabeth Pleasant

INSPECTOR

¹ Use of bold for my emphasis.