



Appeal Decision

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2025

Appeal Ref: APP/X5990/X/24/3339760

422 Edgware Road, London W2 1EG

- 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 Dr Joseph Dangoor against the decision of City of Westminster Council.
 - The application ref 23/04789/CLEUD, dated 12 July 2023, was refused by notice dated 14 February 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (the Act, as amended).
 - The use for which a certificate of lawful use or development is sought is the use of the upper (first, second and third) floors as a single residential unit (Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The outcome of the appeal turns on considering relevant aspects of planning legislation including evidence provided of the alleged continuous use and not on assessing matters of planning merit that would normally require a visual site inspection of the premises. I have therefore been able to determine the appeal without a site visit. Neither side has been prejudiced by this course of action.

Main Issue

3. The main issue, as usual in LDC appeals, is whether the Council's decision to refuse a LDC is well-founded.

Reasons

4. S171B of the Act sets the time limits or immunity periods for enforcement action and therefore lawful development. Although the immunity period is now 10 years¹, the transitional arrangements confirm that for unauthorised change of use to a single dwellinghouse it remains at 4 years where the change of use took place before 25 April 2024, which is the allegation here.
5. The property is a 4-storey (plus basement) former public house (known as The Portman Arms), situated on the corner of Edgware Road and Boscobel Street, which was converted to a sui generis shisha bar, following a successful appeal against the Council's enforcement notice on 22 April 2013.²
6. The appellant claims that the use of the upper floors of the appeal property were occupied solely by the owners of the former shisha bar (the Dar Marrakesh) and

¹ As introduced by the Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024

² APP/X5990/C/12/2176814

their family as a Class C3 dwelling during the period of their lease of the whole property, between 5 August 2010 and 18 January 2023.

7. However, the Council cites the description of the use of the upper floors as an HMO both in the officer delegated report and in last planning appeal decision³ in relation to the refusal of an application for a public house at basement and ground levels and a backpacker's hostel on the upper floors.
8. The Inspector in paragraph 4 of that appeal decision stated that the property, which he visited on 10 September 2019, *'comprises a mix of uses with a shisha bar/restaurant at ground floor with associated storage in the basement, and a HMO located on the upper storeys'*. In paragraph 5 he goes on to say that Council Licensing records show the HMO use of the upper storeys since at least 1994 and that there is a history of Licensing HMO inspections during the preceding period, which the appellant did not dispute. In paragraph 8 the Inspector accepted that some of the bedrooms in the HMO may have been vacant for some time and that some refurbishment may be required.
9. The appellant here, the new owner who acquired the property on 24 April 2023, argues that none of the above descriptions contradicts the statutory declaration of the previous leaseholder (the stat dec), whose family ran the shisha bar/restaurant. I disagree. Vacancy of some of the bedrooms, seen by the previous Inspector at his site visit, does not imply they were lived in at all, not that they were occupied by the leaseholder family.
10. In any case, the LDC application was made on 12 July 2023. That is less than 4 years since the above Inspector concluded that the whole property was in a mixed use as a shisha bar/restaurant and HMO.
11. Furthermore, I must have regard to what the planning unit here comprises. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in applying the formula of material change of use. The general rule has always been that the materiality of change should be assessed in terms of the whole site concerned.
12. In this regard it is apposite to note what the stat dec says about the upper floors, namely that they can only be accessed via the ground floor bar area: there is no independent access to the upper living accommodation. It also states that *'the Property has been used only as a shisha bar with ancillary accommodation on the upper floors and for no other purpose'* (my emphasis).
13. For these reasons it is clear that the planning unit is the whole property at No 422; it is one planning unit whose lawful use was the former mixed use as a shisha bar/restaurant at ground level with associated basement storage and an HMO on the upper storeys, just as the previous Inspector describes in his paragraph 4. There has been no separate use of the upper floors as a Class C3 dwelling, not least because it is necessary to access them from the internal staircase by walking through the ground floor of the building.

³ LPA Ref 18/08998/FULL & APP/X5990/W/19/3229792, dismissed 14 October 2019

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use of the upper (first, second and third) floors as a single residential unit (Class C3) 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).

Nick Fagan

INSPECTOR