



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2025

Appeal Ref: APP/U5930/X/24/3341633

37 Twickenham Road, Leytonstone, Waltham Forest E11 4BN

- 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 Cathal O'Duill against the decision of the Council of the London Borough of Waltham Forest.
 - The application ref 232456, dated 28 November 2023, was refused by notice dated 9 February 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 C4 Houses in multiple occupation.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the relevant date for determining whether the existing development is lawful, is the date of the application, and the parties have submitted sufficient evidence to understand the nature of the site given the dispute.
3. The Council commented that the appellant has put forward additional evidence beyond that submitted as part of the application. However, in section 195 appeals, the parties and interested persons may submit additional evidence which was not before the authority at the time of its decision.
4. Any relevant new evidence advanced at the appeal should be considered since the purpose of the LDC provisions are to enable the making of an objective decision based on the best facts and evidence available when the decision is taken.
5. For the purposes of the certificate, I have used the description given by the Council in their decision notice, in the interests of clarity.

Main Issue

6. The main issue is whether the Council's refusal to issue an LDC was well-founded.

Reasons

Background and Statutory Framework

7. Section 191(2) of the 1990 Act states that uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
8. The appeal concerns the use of a three-bedroom first floor flat. Article 3, Schedule 2, Part 3, Class L (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out that development consisting of the change of use of a building falling within class C3 of the schedule to the UCO¹ to a use falling within class C4 is permitted development.
9. However, an Article 4 Direction came into force in the borough on 16 September 2014. The effect of which was to remove permitted development rights for the change from class C3 to C4. If the use as a class C4 HMO took place before 16 September 2014 it would have benefited from permitted development rights, after that date, express planning permission would have been required.
10. For the appeal to succeed the appellant will need to demonstrate on the balance of probabilities, that the change of use to a class C4 HMO occurred before the confirmation of the Article 4 Direction and continued, until the date of the application, so as to be immune from enforcement action.
11. Planning Practice Guidance states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability – namely what is more likely than not.

The appellant's evidence

12. The appellant's evidence includes a statutory declaration which includes a layout plan and a summary of room occupations and rents paid. They also submitted bank statements and extracts from tenancy agreements along with photographs, which correspond with the layout plan, and details relating to the planning permission for the loft conversion.
13. In the statutory declaration which is dated 15 March 2024 the appellant stated that they purchased the property on 11 May 2001 and at the time of purchase the property consisted of two bedrooms with shared living accommodation. The appellant and a lodger originally occupied the property.
14. In 2004 the loft was converted, and the appellant continued to live in the property and rented the other two rooms to lodgers. This continued until around 2007 when the appellant moved out and let the flat to four people consisting of a couple and two individuals. In 2009 the appellant moved back in, renting the other rooms to two individuals until around 2012 when the appellant again moved out.
15. From 2013 to the present day, it was stated that the property has been let to three individuals as detailed in the summary of room occupations. The appellant provided extracts from tenancy agreements for the period from 1 September 2013

¹¹ The Town and Country Planning (Use Classes) Order 1987 (as amended).

to 1 September 2024 with those named in the agreements corresponding with the summary of room occupations.

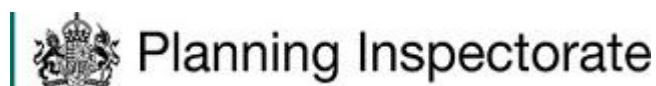
16. The appellant also provided extracts from bank statements which show rental payments for almost all months from 4 September 2013 to 1 March 2024 which are either from a person named as a tenant in the tenancy agreements, or Theydons, who managed the property on the appellant's behalf for a time. The payments generally correspond with the amounts set out in the tenancy agreements, and although, where not from Theydon's, are only from one person named in the tenancy agreement, the appellant explained that a lead tenant was responsible for coordinating the payment.
17. Based on the appellant's submission it seems more likely than not that the flat has been occupied since at least 1 September 2013 by groups of three individuals as a class C4 HMO and that use continued until the date of the application.
18. The appellant's declaration was sworn before a solicitor, and the appellant has therefore properly attested to the truthfulness of their evidence. Their account of events together with the bank statements and tenancy agreements, is sufficiently precise and unambiguous and should therefore be afforded significant weight, unless there is evidence that might indicate otherwise.
19. In this respect the Council stated that Council Tax records and the Valuation Office Agency website indicate that the property is in use as a dwellinghouse. However, they did not explain how they would expect the property to be rated. In any event the absence of the correct rating, nor an HMO license, is not determinative as to the actual use of the property.
20. The Council also stated that the appellant's submission lacks any corroborating evidence to support the claim that the named tenants have lived at the property. However, the appellant's evidence need not be corroborated provided their evidence alone is sufficiently precise and unambiguous. They also appear to suggest that the change of use to an HMO took place in 2019, when smoke detectors were installed, albeit there is no substantive evidence to support this position, and this is a matter of little weight.
21. As a matter of fact and degree, the evidence presented indicates, on the balance of probabilities, that the use as a class C4 HMO began before the Article 4 Direction came into force and continued until the date of the application. There is little evidence which contradicts or makes the appellant's version of events less than probable.

Conclusion

22. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the C4 HMO use is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Felicity Thompson

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 28 November 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The evidence presented indicates, on the balance of probabilities, that the use as a C4 HMO began before the Article 4 Direction came into force and continued until the date of the application.

Signed

Felicity Thompson

Inspector

Date: 04 December 2025

Reference: APP/U5930/X/24/3341633

First Schedule

Use of property as a small house in multiple occupation (HMO) (Use Class C4).

Second Schedule

Land at 37 Twickenham Road, Leytonstone, Waltham Forest E11 4BN

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 04 December 2025

by Felicity Thompson

Land at: 37 Twickenham Road, Leytonstone, Waltham Forest E11 4BN

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Scale: Not to Scale

