



Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2025

Appeal Ref: APP/U5930/X/24/3353405

33 Barclay Road, Leytonstone, London E11 3DQ

- 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 High Rise Ltd against the decision of Waltham Forest London Borough Council.
 - The application ref 223526, dated 3 January 2023, was refused by notice dated 22 August 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which an LDC is sought is retention of small House in Multiple Occupation (HMO) (Use Class C4).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Determination of the appeal requires an assessment of documentary evidence. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.
3. The description of the use for which an LDC is sought is taken from the Council's Decision Notice, rather than from the application form. It is an accurate description.

Reasons

4. 33 Barclay Road is a two-storey plus attic mid-terraced property that was a Class C3 dwellinghouse as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended). Under the provisions of Class L of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) the change of use from Class C3 to Class C4, and vice versa, is permitted development and does not require a grant of planning permission. However, a Direction dated 16 September 2014 is in place, made under Article 4(1) of the GPDO, which restricts that permitted development.
5. The Appellant maintains that the property has been in use as an HMO since before the Article 4 Direction came into effect, that the use has therefore subsisted for in excess of ten years and is immune from enforcement action, and that the use is thus lawful. The onus of proof is on the Appellant who, to be successful, must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the use of the property as an HMO commenced before 16 September 2014 and that the use has subsisted continuously up to the date of the application.
6. The earliest Assured Shorthold Tenancy (AST) Agreement submitted in evidence is for the period 26 September 2014 to 25 September 2015 between the Landlord and

Need2Move, a letting agency. There are further subsequent AST Agreements up to 12 December 2019, all to letting agencies, and an AST Agreement with six individuals for the period 1 September 2021 to 31 August 2022. Two Rent Histories indicate rent paid before September 2014 but they do not mention the appeal property and could therefore relate to any property. Another AST Agreement is unsigned and does not show either commencement or termination dates.

7. The earliest AST Agreement commenced after the Article 4 Direction came into effect. Furthermore, there are no AST Agreements for the period January 2020 to August 2021 or after August 2022. An Electoral Register screenshot only shows the name of one resident at any one time and there is no evidence of utility bill or Council Tax payments. The Appellant has not provided sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the use of the property as an HMO commenced before 16 September 2014 and that the use has subsisted continuously up to the date of the application.

8. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for retention of small House in Multiple Occupation (HMO) (Use Class C4) at 33 Barclay Road, Leytonstone, London was well-founded and the appeal fails. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector