
Appeal Decision

by **Andrew McGlone BSc MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16th December 2025

Appeal Ref: APP/G5750/X/24/3348243

32 Morris Avenue, Manor Park, Newham, London E12 6EW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Daniel Marku against the decision of the Council of the London Borough of Newham.
 - The application ref 24/00765/CLE, dated 14 April 2024, was refused by notice dated 2 July 2024.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is described as 'this property has been used as HMO since 2015 and it's well established HMO property with HMO licence, moreover the local authority benefits from receiving 3 council taxes. Considering the demand for accommodation in Newham this is a perfect affordable property.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An LDC is not an application for planning permission. Its purpose is to enable the appellant and others to ascertain whether specific operations or activities would be lawful. The burden of proof is upon the appellant. The test of the evidence is one of balance of probability. The appeal concerns only the lawfulness of the matter for which the LDC is sought, not its planning merits. The decision is based on the facts of the case and on relevant planning law and judicial authority.
3. An application under S191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land are lawful. S191(2)(a) confirms that a use is 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.
4. S191(4) of the Act sets out 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 of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect.

Main Issue

5. The main issue is whether the Council's decision to refuse the LDC was well founded. This turns on whether the appellant can show, on the balance of probability, that the use of the appeal property falls within Class C4, relating to the use of a dwellinghouse by three to six residents as a 'house in multiple occupation' (HMO), and does not involve development or require planning permission.

Reasons

6. There is no dispute that the existing lawful use of this two storey terraced property

is a single dwelling house which falls under Use Class C3(a) as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO).

7. The Council introduced an Article 4 Direction on 31 July 2013. This prevents a permitted change from Class C3 to Class C4 and means that such a change would be 'development' and require the benefit of planning permission unless the appellant can show that no enforcement action may be taken in respect of it because the time for enforcement action has expired. The period to assess that is 14 April 2014 to 14 April 2024.
8. The application form states that the use began on 10 March 2016 or alternatively in 2015. Either date is shy of the required ten-year period. Further, an Enforcement Notice (EN) relating to the property was issued on 29 November 2013 alleging that "without planning permission the material change of use to two self-contained flats". An appeal decision dated 22 May 2014 concerning the EN was dismissed. The decision said that the property was arranged as "two separate flats - a two-bedroom flat on the ground floor and a three bedroom flat on the first floor".
9. A Planning Contravention Notice (PCN) was issued by the Council to understand how the property was arranged and occupied. The response to the PCN stated that the HMO use commenced in '*summer 2016*', which is after the relevant period started. Another EN issued by the Council on 9 December 2016 alleged "the material change of use to a sui generis HMO" as the number of residents was above that permitted by Class C4.
10. On 9 May 2017 the Council noted in connection with a compliance case that "the owner claims property is vacant, and he has new tenants moving in." The Council say that the locks had been removed from the internal doors of the property and that the property had been let to a family, which, in the Council's view, meant that the property had reverted to a Class C3(a) use.
11. A HMO licence was issued by the Council for eight rooms and eight unrelated occupants for the period of 28 March 2019 to 27 March 2024. This was then renewed in 2024 for eight rooms and nine people. Both licences relate to a higher number of residents than permitted by Class C4.
12. Some of the Room Let Agreements are not signed or dated. Others date from 2018 and after then. None predate 2018. This broadly reflects what a neighbour from 30 Morris Avenue says, which is that the property has had rented out room lets in the past four to five years. However, Council Tax evidence does not indicate which room they relate to or who the occupier is or was, and it only relates to 2021/22, not any other year in the relevant period.
13. Given the above, it has not been demonstrated, on the balance of probabilities, that the appeal property has been used for Class C4 use for the relevant period. As such, it has not been shown that no enforcement action may be taken in respect of it because the time for enforcement action has expired.

Conclusion

14. For the above reasons, I conclude that the Council's refusal to grant a certificate of lawful use or development is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Andrew McGlone

INSPECTOR