



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2026

Appeal Ref: APP/U5930/X/24/3336387

31 Madeira Road, Leytonstone, London E11 4AG

- 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 Ms Chinemere Rose Nwabueze against the decision of Waltham Forest London Borough Council.
 - The application ref 232055, dated 16 August 2023, was refused by notice dated 11 October 2023.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which an LDC is sought is change of use of the family dwelling into four people HMO.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the use given above is taken from the application form. The Council's decision gave a different description, "use of property as a small house in multiple occupation (HMO) (Use Class C4)." This refers to a use within Class C4 of Part C of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (as amended) ("Class C4" of "the 1987 Order"). The reference to Use Class C4, also known as a small HMO, adds precision and I shall determine the appeal on that understanding.
3. The parties had been advised that a site visit would not be undertaken before the appeal was transferred to me. I have reviewed this and agree that a site visit would not assist in my deliberation of the facts pertinent to the main issue in the appeal.

Main Issue

4. The main issue is whether the Council's refusal to issue an LDC was well founded. The responsibility for providing sufficient information to support an LDC appeal primarily rests with an appellant. However, if no other evidence contradicts or otherwise makes her version of events less than probable, and provided her evidence is sufficiently precise and unambiguous, there is no good reason to withhold an LDC.

Reasons

5. Section 191(2) of the Act provides that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. There is no evidence that the change of use to use as a small HMO contravenes any requirement of an enforcement notice, so only (a) needs to be considered further. The onus to show that enforcement action could not be taken lies with the appellant, to be demonstrated on the balance of probabilities.

What needs to be demonstrated

6. Enforcement action may be taken if any development defined in section 55 of the Act is carried out without planning permission. The definition includes “the making of any material change in the use of any buildings or other land.”
7. Prior to 1 October 2010, a change of use from use as a dwellinghouse¹ to use as an HMO by any number of residents was development requiring an express grant of planning permission. Since that date, the change of use of a dwellinghouse to use as a small HMO has been permitted by other Orders, currently Article 3 and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“Class L” of “the 2015 Order”).
8. However, a Direction that alters the effect of the 2015 Order within Waltham Forest came into force on 16 September 2014. As a result, any change of use of the appeal site from use as a dwellinghouse to use as a small HMO made on or after that date requires an express grant of planning permission, as it did before 1 October 2010. The Direction does not affect the permission Class L also grants for the change of use from use as a small HMO to use as a dwellinghouse.
9. The foregoing timeline is significant in respect of the appellant’s contention that a change of use to use as a small HMO that took place before 16 September 2014 is immune from enforcement action. It is important to note that Class L has only had effect since 1 October 2010, so it could not permit the making of a relevant change of use before that date. As the appellant contends that the change of use was made in September 2001, it cannot be lawful by reason of Class L.
10. The remaining route to acquiring immunity from enforcement action is via section 171B(3) of the Act. This requires that the change of use was made on or before 16 August 2013, 10 years before the date of the application, and that the small HMO use continued thereafter for not less than 10 years without significant interruption.

Whether the change of use was made on or before 16 August 2013

11. Tenancies of the property were entered into on 19 September 2001 and 10 July 2002 by 4 people, on 15 August 2003 by 2 people, and on 2 July 2004 by 3 people. In each instance, all the people had different surnames and were therefore in all probability unrelated.
12. The Council accepts that these tenancy agreements and other documentation from the same period indicate use as a small HMO and I agree. It has therefore been demonstrated, on the balance of probabilities, that the change of use of the property to use as a small HMO was made on or before 16 August 2013.

Whether the use continued thereafter without significant interruption

13. The Council accepts it is likely that the property was continually let for residential occupation from 2001 until at least 2014 and having reviewed the submitted evidence, I concur. The issue in question is whether that includes a period of not less than 10 years in which the property was used as an HMO without significant interruption.

¹ A use within Class C3 of the 1987 Order.

14. The tenancies mentioned above, which indicate use of the property as a small HMO, ran between 19 September 2001 and 1 July 2005, a period of less than 4 years. Only one other tenancy agreement has been provided, covering the calendar year 13 February 2008 to 12 February 2009. It appears that this tenancy was renewed or extended because evidence from a letting agent shows that the first named tenant paid rent until 12 October 2009.
15. However, the 4 people named in this last tenancy agreement have masculine and feminine versions of the same surname. The Council understandably questions whether this represents single family occupation rather than use as a small HMO, but the appellant has not offered an explanation. In the absence of any further evidence on this matter, the likelihood of HMO use by 4 unrelated people with a common surname is too remote to be credible. The appellant's evidence is therefore not sufficiently precise and unambiguous in this respect.
16. Even if there had been small HMO use between 13 February 2008 and 12 October 2009, the total period covered by tenancy agreements and recorded rent payments would still be less than 10 years. Furthermore, it includes a gap of 3½ years with no evidence of any tenancy. With one exception, considered below, there are no records of rent being paid during that gap.
17. The exception is a letting agent's document showing that rent was paid for the period 30 November to 29 December 2006 by a person not named in any of the provided tenancy agreements. However, there is no evidence as to whether they occupied the property alone, as part of a family or with unrelated people, so use as a small HMO has not been demonstrated for that additional brief period.
18. It has been demonstrated, on the balance of probabilities, that the change of use to use as a small HMO was made more than 10 years before the date of the application. However, it has not been demonstrated, to the same standard, that the use continued for not less than 10 years thereafter without significant interruption.
19. A change of use from a family dwelling to use as a small HMO made on or after 1 October 2010 and before the Direction came into force on 16 September 2014 would have been permitted by Class L. However, the appellant has not produced any evidence of the use of the property during that period.

Conclusion

20. For the reasons given above, I conclude that the Council's refusal to grant an LDC for the change of use of the family dwelling into four people HMO (Use Class C4) 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.

Mark Harbottle

INSPECTOR