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## Appeal Decision

Site visit made on 16 December 2025

**by Felicity Thompson BA(Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 06 February 2026**

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**Appeal Ref: APP/W5780/X/23/3327666**

**39 Courtland Avenue, Cranbrook, Redbridge, Ilford IG1 3DN**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Peter Gear of ACD Homes LTD against the Council of the London Borough of Redbridge.
  - The application ref 0539/23 is dated 22 February 2023.
  - 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 'Existing use of property as a small HMO, use class C4 (up to 6 people).'
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Mr Peter Gear of ACD Homes LTD against the Council of the London Borough of Redbridge. This application is the subject of a separate decision.

### Preliminary Matters

3. The description in the banner heading above is taken from the appellant's appeal form, since that given on the original application form contains superfluous wording.
4. The appeal is a result of the Council not giving notice of its decision within the statutory determination period. The Council have submitted a statement including a reason why they would have refused to grant a certificate of lawful use, which I have had regard to.

### Main Issues

5. Based on the submissions, the main issues are whether the use of the property is as a class C4<sup>1</sup> HMO and, if so, whether that use is lawful.

### Reasons

#### *Background and Statutory Framework*

6. 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

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<sup>11</sup> The Town and Country Planning (Use Classes) Order 1987 (as amended).

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.

7. 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 UCO to a use falling within class C4 is permitted development.
8. However, an Article 4 Direction came into force in the borough on 6 December 2019. 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 6 December 2019 it would have benefited from permitted development rights, after that date, express planning permission would have been required.
9. For the appeal to succeed the appellant will need to demonstrate on the balance of probabilities, that the property is in use as a class C4 HMO and the change of use 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.
10. 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.

#### *The appellant's evidence*

11. The appellant's evidence includes a timeline of occupation, a number of affidavits, tenancy agreements, bank statements and floor plans and an HMO license issued by the Council dated 13 November 2017.
12. The appeal property is a two-storey terraced house. The property was not occupied at the time of my visit however, the relevant date for the consideration of the appeal is the date of the application. Nevertheless, I observed that the layout corresponds with the floor plans provided by the appellant.
13. These show three bedrooms, with lockable doors, on the ground floor with a shared kitchen and bathroom and access to a garden at the rear, all accessed off a shared hallway. On the first floor, as labelled on the floor plans are two bedrooms, a reception room, kitchen/diner and bathroom.
14. The appellant stated that there are three occupants of the ground floor rooms, one who has been resident since 1993, another since 1998, both who, according to the appellant, were still resident in September 2022. There are affidavits from both residents dated 9 November 2011, in which it is stated that they had a room of their own with shared facilities, and signed tenancy agreements dated 13 July 2011. Bank statements dated June – July 2018 and July – August 2022 show rental payments from those occupants, or in the case of one of those payments from Redbridge Council on their behalf.
15. In the case of the third occupant, it is stated that they occupied a room in the property from 2015 and were still resident in September 2022, with a copy of a signed tenancy agreement dated 1 February 2015 and two bank statements dated

June – July 2018 and July – August 2022 showing two rental payments which correspond with the name on the tenancy agreement.

16. In respect of the first-floor accommodation, there is a tenancy agreement in which the address is given as 39 Courtland Avenue (first floor flat) dated 30 July 2012 and evidence of a rental payment on 1 July 2018, although the name of the payee is not that given on the tenancy agreement and there is no explanation for that. The appellant stated that the occupant and their young family occupied the accommodation between 2012 and 2019.
17. A further occupant took the tenancy for this space in 2019 who was still, according to the appellant, resident in September 2022. There is a signed tenancy agreement dated 20 December 2019 to support this assertion, in which the accommodation is referred to as the upstairs flat, along with a bank statement showing a rental and service charge payment on 31 July 2022.
18. The bank statements and tenancy agreements do not cover the entire period proceeding and after the confirmation of the Article 4 Direction coming into force. Nevertheless, those provided together with the affidavits indicate that those occupants of rooms on the ground floor, were resident in 2018 and remained resident in 2022.
19. Evidence in respect of the first-floor accommodation is limited but provides some indication that the accommodation was occupied between July 2012 and September 2022.
20. However, the Council in their statement suggested that the use of the property was as self-contained flats, specifically referring to the layout of the first-floor accommodation and references in the tenancy agreements.
21. The accommodation on the first floor contains all the facilities required for day-to-day private domestic existence and is contained behind a door at the top of the stairs, which I saw had a lock on it. The accommodation is clearly capable of being a dwellinghouse (flat). In my view, the only distinguishing feature between the accommodation and what a casual observer may consider to be a typical flat, is the absence of a separate entrance, and the occupants of the accommodation *could* [my emphasis] access and use the facilities on the ground floor, including the garden.
22. In this respect, I noted that in the letter from Kingsley Smith Solicitors LLP it was stated that occupiers of the first-floor accommodation have use of the ground floor kitchen/living space if they wish. It was also stated that occupiers of the ground floor do not share the reception room on the first floor however, in their final comments the appellant stated that the first floor is accessible by occupiers of the ground floor as there are no locks on the doors – contrary to my observations.
23. In any event, given that at least one of the former occupants occupied the accommodation with their family, and the extent of facilities provided on the first floor, it seems highly unlikely that they would, and there is no evidence to demonstrate they did, use the bathroom and kitchen on the ground floor, nor the basement or garden at the rear. Albeit it seems likely they would have used the parking to the front.

24. Furthermore, there are single tenancy agreements for the first-floor accommodation, referred to as first floor/upstairs flat, not agreements for individual rooms, as is the case for the ground floor rooms. Moreover, the amount paid for the first-floor accommodation, as detailed in the bank statements, is also greater than that for the single room occupants on the ground floor.
25. Accordingly, as a matter of fact and degree, I find that the accommodation on the first floor consisted of a self-contained flat.
26. I acknowledge that an HMO license was granted by the Council however, licensing operates under a different legislative regime. Moreover, the license merely confirms the suitability for occupation by not more than six persons, occupying as five households, and is based on the information supplied in the application, which I do not have.
27. The application was for a C4 HMO. The evidence indicates that the property consisted of three letting bedrooms on the ground floor where the occupants shared facilities (HMO), and a self-contained flat on the first floor, and that this use had probably been ongoing since around 2012, albeit the evidence regarding actual occupation of the flat is scant.
28. Based on the evidence before me, I find, as a matter of fact and degree, that the appellant has failed to provide sufficiently precise and unambiguous evidence to demonstrate, on the balance of probability, that the whole property was in use as a C4 HMO and that use is lawful.

### **Conclusion**

29. For the reasons given above I conclude that, had the Council refused to grant a certificate of lawful use or development in respect of the 'existing use of property as a small HMO, use class C4 (up to 6 people)' that refusal would have been 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).

*Felicity Thompson*

INSPECTOR