

Appeal Decision

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th February 2026

Appeal Ref: APP/V5570/X/23/3333853

76 Marlborough Road, London, N19 4NJ

- 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 Zaynal Abedin against the decision of the Council of the London Borough of Islington (the LPA).
 - The application ref P2023/1879/COLP, dated 28 June 2023, was refused by notice dated 13 October 2023.
 - The application was made under section 192(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 change of use to class C4 – HMO (House in Multiple Occupation).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Zaynal Abedin against the Council of the London Borough of Islington. The application is subject to a separate Decision.

Preliminary Matters

3. Given the nature of the appeal, I am satisfied that I can proceed to a decision without the benefit of a site visit, relying on the written evidence submitted.

Main Issue

4. The main issue is whether the LPA's decision to refuse the application for an LDC was well-founded.

Reasons

5. The LDC application is made under S192(1) of the Act to ascertain whether the proposed use of 76 Marlborough Road as an HMO is lawful. S191(2) of the Act states that uses are lawful at any time if – (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for taking enforcement action has expired or for any other reason); and (b) they did not constitute a contravention of any of the requirements of any enforcement notice then in force.
6. The appellant's case is made on the basis that the proposed use is lawful as, at the date the LDC application was made, it would have been granted planning permission by virtue of Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
7. Class L(b) of Schedule 2 of Part 3 of the GPDO identifies that development consisting of a change of use of a building from a use falling within Class C3

(dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule, is permitted development and thus is granted planning permission by Article 3(1).

8. However, S191(2) is clear that both limbs must be met for a use to be lawful. Turning to S191(2)(b) first. It is apparent that an enforcement notice was issued by the LPA in respect of the appeal property on 11 October 2018. The notice alleged a breach of planning control comprising the change of use of the property to nine residential self-contained studio flats. The notice required cessation of the use of the property as nine self-contained residential studio flats, the removal of all but one kitchen and WC and shower unit from the property and the removal of all resulting debris from the land.
9. Nonetheless, the LPA exercised its powers under S173A(1)(b) of the Act to waive or relax any requirement of an enforcement notice on 11 December 2019. The terms of the notice were varied so that they still required cessation of the use of the property as nine self-contained flats but now: (a) all kitchens were to be removed except the kitchen in the ground floor rear room, as noted in the proposed layout out shown in drawing no. 140304-01-E2 dated 18-11-19 attached and; (b) all the WC and shower units from the property are removed except the ground floor rear room and loft room WC and shower units and install WC and bathroom facilities on the half landing rear room between the ground and first floor in the configurations, as noted in the proposed layout shown in drawing no. 14034-01-E2 dated 18-11-19 attached to the notice. The LPA confirmed to the appellant in writing on 13 October 2020 that the requirements of the notice had been complied with.
10. The proposed use would comprise a six-bedroom HMO. It would comprise six single bedrooms and accommodated six people with one bedroom on the ground floor, two bedrooms on the first floor and two bedrooms on the second floor, and a bedroom in the loft space with a communal kitchen and dining room on the ground floor.
11. Bedrooms 3, 4 and 5 as depicted on the proposed plans would contain en-suites. The LPA says that the inclusion of such en-suites would be a contravention of the requirements of the enforcement notice as it required all WC and shower units from the property to be removed, except for the WCs and shower units on the ground floor and in the loft space, and the installation of bathroom and WC facilities on the half landing between the ground floor and first floor. Thus, no en-suites were to remain in bedrooms 3, 4 and 5.
12. S181(1) of the Act is clear that compliance with an enforcement notice, whether in respect of the (b) the discontinuance of any use of land; or (c) any other requirements contained in the notice, shall not discharge the notice. In essence, reinstatement of those WC and shower units would be a contravention of the requirements of the notice and therefore the terms of the notice would be breached.
13. Nonetheless, S180(1) of the Act states that where, after the service of a copy of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

14. The appellant states that following compliance with the requirements of the enforcement notice the property reverted to use as a single dwellinghouse. Thereafter, planning permission was granted on 27 February 2023 for the use of the property as one single family residential dwelling house (use class C3)¹. As such, it is apparent that the use of the property as a dwellinghouse was carried out before the grant of that permission.
15. Nonetheless, the permission was granted subject to a condition requiring compliance with the approved plans. No en-suites in bedrooms 3, 4 and 5 were shown on the approved plans. As a result, the requirements to remove the WC and shower facilities other than those on the ground floor, loft room and half landing, are not inconsistent with the grant of the 2023 permission. The notice did not therefore cease to have effect in accordance with S180(1) of the Act.
16. Likewise, even if the proposed HMO use were granted planning permission by Article 3(1) of the GPDO as permitted development as the appellant argues, that cannot be conferred retrospectively. S180(1) only states that the notice shall cease to have effect so far as it is inconsistent with a permission granted retrospectively for a development. Clearly, as the application before me here is proposed under S192, that cannot be the case.
17. As a result, I find that the enforcement notice issued in October 2018, and varied under S173A(1)(b) in December 2019, was in force at the date of the LDC application and the requirements continued to have effect. The proposed change of use of the property to Class C4 HMO on the basis of the plans submitted would, at the date of the LDC application, constitute a contravention of the requirements of enforcement notice then in force for the reasons given above.
18. Consequently, at the date of the LDC application, the proposal would not have been lawful within the meaning of S191(2) of the Act.

Conclusion

19. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the change of use to class C4 – HMO (House in Multiple Occupation) is 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).

J Whitfield

INSPECTOR

¹ LPA Ref: P2023/0003/FUL