



Appeal Decision

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 11 MARCH 2026

Appeal Ref: APP/T5720/X/24/3345370

Flat 3, 121 Edgehill Road, Merton, MITCHAM, CR4 2HZ

- 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 Strum against the decision of the Council of the London Borough of Merton.
 - The application ref 24/P0695, dated 13 March 2024, was refused by notice dated 17 April 2024.
 - 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 'The use of flat 3 as a C4 small HMO'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant did not include evidence submitted with the lawful development certificate (LDC) application in their appeal submission. Copies were requested and documents were submitted by the appellant which included new evidence along with documentation related to 119 Edgehill Road. The appellant subsequently confirmed that no new evidence was intended to be submitted and it was requested that this and documentation related to No 119 be disregarded.
3. In view of the matters in dispute between the parties and nature of the evidence provided, a site visit was not considered necessary in this case.

Main Issue

4. The main issue is whether the LPA's decision to refuse to grant a LDC was well-founded. This will turn on whether the house in multiple occupation (HMO) use described in my banner heading above was lawful as at the date of the application.
5. Planning merits are not relevant to the assessment and the onus is on the appellant to make their case on the balance of probability. If the LPA does not have any evidence to contradict the appellant's version of events or otherwise make the appellant's version less than probable, there is no good reason to refuse to grant a LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Reasons

Planning history

6. Planning permission was granted¹ in 2019 for erection of a single storey rear and two storey side extension, conversion of roof space and erection of rear roof extension and conversion of dwellinghouse to form one x 3 bedroom and two x 1 bedroom flats at 121 Edgehill Road. Later applications² related to conversion of 119 and 121 Edgehill Road into 7 self-contained flats were refused. An application³ was later made to discharge conditions under the 2019 Permission.
7. On 17 November 2022 a Direction made under Article 4(1) of the GPDO⁴ relating to the area in which the appeal property is located came into force. This has the effect of revoking permitted development (PD) rights conferred by Schedule 2, Part 3, Class L of the GPDO which grant deemed planning permission for a change of use from a use falling within Class C3 (dwellinghouses)⁵ to a use falling within Class C4 (as a HMO occupied by not more than six residents) (Class L). Subsequent LDC applications⁶ made in respect of existing use of Flat 3 as a small HMO were refused.

Legislation and Parties' positions

8. Pursuant to s191(2) of the 1990 Act, uses and operations are lawful 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 enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of an enforcement notice.
9. The appellant contends that the property was in use as a Class C4 HMO before the Article 4 Direction came into effect and that the claimed Class C4 use is PD under Class L and lawful on that basis⁷.
10. The LPA's position is that the appellant's evidence has not demonstrated on the balance of probability that the 2019 Permission was lawfully implemented prior to the claimed Class C4 HMO use and that the LPA was thus unable to determine whether the claimed existing Class C4 use is lawful⁸.

Analysis

11. As to implementation, the LPA does not appear to dispute that, following grant of the 2019 Permission, operational development was carried out in the form of a single storey rear and two storey side extension, conversion of roof space and erection of rear extension. The matter disputed by the Council is whether the 'layout consented' under the 2019 Permission was implemented.
12. The pre-existing plans submitted with the LDC application show Flat 3's layout as a one bedroom flat over two floors with a kitchen/living/dining area on the upper floor,

¹ Ref: 19/P1230 ('2019 Permission')

² Refs: 20/P0779 and 20/P2295

³ Ref: 21/P4065

⁴ Town and Country Planning (General Permitted Development) (England) Order 2015

⁵ Per the Town and Country Planning (Use Classes Order) 1987 as amended

⁶ Refs: 23/P2874 and 24/P0042

⁷ It is not submitted that the claimed existing Class C4 use would be lawful for any other reason

⁸ Per Article 3(5) of the GPDO permission granted by Schedule 2 does not apply if '(a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful'

with one bedroom and ensuite bathroom along with a separate shower room on the lower floor. The existing plans submitted with the LDC application show Flat 3 as having two ensuite bedrooms on the lower floor, with a further ensuite bedroom along with a kitchen on the upper floor.

13. As to the layout, the LPA makes reference to Building Control Records cited as stating 'Initial Notice ref IN21/02646 – Description : 17/12/2021 Amendment Notice: Change of use of the existing dwelling for 3 residential flats including 2 storey side / rear extensions and loft conversion for a posterior use as HMO per flat with 10 units in total. Ref: 21-55825'.
14. The LPA's interpretation of these records is that the conversion of No 121 was 'purpose built' with ten units and so was not built out in accordance with the 2019 Permission approved drawings. The LPA also comments that there are no Building Control records related to the conversion of Flat 3 into a HMO and that 'installation of a W/C for bedroom 3' (presumably the upper floor bedroom) would have entailed drainage changes and so some Building Control records would have been expected in respect of this.
15. The appellant contends that the construction was carried out in accordance with the 2019 Permission approved drawings⁹. Related evidence is submitted as follows:
 - Professional Consultant's Certificate (PCC) of MFL Professional dated 10th August 2021;
 - Email from Quadrant Approved Inspectors Building Control dated 29 April 2021; and
 - Tenancy Agreements dating from September 2021 in respect of three flats at 121 Edgehill Road, along with connected management company statements.
16. As to the PCC, the appellant states that this confirms that the 'property reached practical completion by 1st September 2021 in accordance with the approved drawings under application 19/P1230', outlining also the importance of the PCC for mortgage purposes. The PCC submitted does not though confirm compliance with approved planning permission drawings, indicating only compliance with drawings approved under 'building regulations' and the 'building contract'. As the LPA notes, these drawings would not necessarily be consistent with approved planning permission drawings and the appellant provides no substantive evidence indicating these to have been the same.
17. As to email correspondence from Quadrant, the appellant relies on these as evidence confirming Quadrant's appointment as Approved Inspectors for the 2019 Permission works and that the project was 'overseen and verified' by professional inspectors. The email refers to a change of use to three flats but does not offer substantive evidence of implementation of the layout approved pursuant to the 2019 Permission.
18. With respect to the September 2021 Tenancy Agreements submitted, these are in respect of one three bedroom flat and two one bedroom flats, one of which appears to relate to Flat 3 as the 'first and second floor flat'. A statement from Blossom

⁹ The appellant appears to accept that a change in layout as indicated by the Council would represent non-implementation of the 2019 Permission

Estates management company reflect the rent payments indicated in these Tenancy Agreements. However, there is no schedule of condition, marketing details or other substantive evidence indicating that the layout as originally constructed was per the 2019 Permission approved plans.

19. As to the LPA's evidence, while the appellant has indicated as regards Building Control records that the application originally referenced the flats and was revised to reflect the HMO conversion as an 'administrative update' rather than an 'indication of non-implementation', no explanation is offered to counter the LPA's query in relation to the absence of any Building Control records related to installation of a bathroom for Flat 3's third bedroom as part of the claimed HMO conversion.
20. The LPA also raises a discrepancy as between the appellant's claimed date of commencement of the Class C4 use being prior to November 2022 as compared to the date of 25 July 2023 stated on the application form. Presumably this was a typographical error but this has not been addressed by the appellant.
21. I find then on the evidence before me and as a matter of fact and degree that the appellant's evidence is not sufficiently precise and unambiguous to indicate that the 2019 Permission was lawfully implemented on the balance of probability.
22. As such, while I note evidence of Tenancy Agreements and bank statements in support of the claimed HMO use of Flat 3 prior to the Article 4 Direction being in force, since I have not been able to find that the 2019 Permission was lawfully implemented, on the available evidence, I find that the use claimed was not lawful as at the date of the LDC application.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use of flat 3 as a C4 small HMO 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).

V Bond

INSPECTOR