



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 29 APRIL 2026

Appeal Ref: APP/G5750/X/25/3367620

130 Charlemont Road, East Ham, Newham, LONDON, E6 6HE

- 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 KJV Properties Ltd against the decision of the Council of the London Borough of Newham.
 - The application ref 25/00392/CLE, dated 27 February 2025, was refused by notice dated 23 April 2025.
 - 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 Change of C3 Dwelling to C4 HMO (Retrospective)'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the appellant's planning statement as no description was given on the application form.
3. In view of the matters in dispute and nature of the evidence submitted in this case, it was proposed that the appeal could be determined without a site visit. No objection was raised to this approach and the appeal has been determined on this basis.
4. New evidence was submitted by the appellant with the appeal which was not before the LPA when it determined the application. Since s195(2) of the Town and Country Planning Act 1990 (1990 Act) refers to whether or not the Council's refusal is well-founded, rather than the reasons for that decision, it is appropriate that I consider new evidence included with the appeal.

Main Issue

5. The main issue is whether or not the Council's refusal was well-founded. This will turn upon whether the development as described above was lawful as at the date of the lawful development certificate (LDC) application.
6. Planning merits are not relevant to my assessment. My decision rests solely upon the application of the law and judicial authorities. The onus is on the appellant to make their case on the balance of probability. If there is no evidence from the LPA or any other party to contradict the appellant's version of events, there is no reason to refuse to grant a LDC provided that the appellant's account is sufficiently precise and unambiguous to justify the grant of a LDC on the balance of probability.

Reasons

Immunity period/single dwellinghouse

7. Subsection 191(2) of the 1990 Act states that development is lawful if: (a) no enforcement action can be taken in respect of it (whether because it did not involve development, or require planning permission, because the time for enforcement action has expired, or for any other reason); and (b) it does not constitute a contravention of any of the requirements of any enforcement notice in force.
8. The parties agree that the original lawful use of the appeal property was as a Class C3 dwellinghouse. Permitted development (PD) rights under Class L¹ normally grant deemed planning permission in respect of a change of use from a C3 single dwelling to a small² house in multiple occupation (HMO) under use class C4 and vice versa. Class L PD rights for a change from use class C3 to C4 were though removed for the area in which the appeal property is located by an Article 4 Direction³.
9. The appellant's claim then is based on the time for enforcement action having expired, rather than on the basis that it constitutes PD. The applicable s171B⁴ time limits for taking enforcement action are: (1) for operational development, four years (2) for a change of use of any building to use as a single dwelling house, four years; (3) for any other breach, a ten year time limit.
10. The appellant contends that the claimed change from use class C3 to C4 represents a change of use to use as a single dwelling house meaning a four year immunity period is applicable, relying on the *Brent*⁵ judgment. The LPA's position is that a ten year immunity period applies on the basis that the four year period for change to a 'single dwelling house' does not apply to 'a change of use to an HMO or some other residential use where units are not self-contained'.
11. In *Brent*, it was held that, for a use to fall within class C4, it would necessarily have to be taking place in a dwellinghouse. This was by reason of the definition of class C4 itself being '*use of a dwellinghouse*' as a HMO. I accept the LPA's position that the class C4 wording stipulates use of a dwellinghouse, in contrast with class C3 which references use as a dwellinghouse; the fact that a use falls within class C4 does not of itself then mean that it represents use as a dwellinghouse. However, a use that falls within Class C4 is not necessarily excluded from being in use as a single dwellinghouse since a broad spectrum of living arrangements within a dwellinghouse can fall within the ambit of Class C4.
12. Indeed, Class C4 use⁶ stipulates that occupants cannot 'form' a single household i.e.⁷ they cannot all be family members. Class C4 can therefore include occupants *living as* a single household as long as they do not *form* a single household. This connects to the wording of Class C3(c) which references 'not more than six residents living together as a single household... (*other than a use within class C4*)'.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) Schedule 2, Part 3, Class L

² Used by not more than 6 residents

³ Which came into force on 31 July 2013

⁴ of the 1990 Act

⁵ London Borough of Brent v SSHCLG & Yehuda Rothchild [2022] EWHC 2051 (Admin)

⁶ Per cross reference to s254 Housing Act 2004

⁷ Per s258 Housing Act 2004

13. Plainly then, six residents *living together as a single household* can fall within Class C3, which represents use as a dwellinghouse. It would seem odd then if six residents living together as a single household and meeting with the Class C4 definition could never represent use as a single dwellinghouse.
14. As to whether the claimed use of the appeal property represents use as a single dwellinghouse, while I have information as to the physical layout of the property indicating private bathroom facilities and a shared kitchen arrangement, I do not have detail as to how living arrangements have worked in practice in order to assess, for example, whether or not there was a communal mode of living.
15. While the appellant submits commercial lease agreements for 'Chariteens Residential Family Centre' as lead tenant, I do not have detailed evidence as to tenancy arrangements for subtenants occupying the various bedrooms within the building. I also do not have information as to how long various occupants remained in situ, which would potentially offer some further indication as to how likely they were to be living as a single household.
16. On the available evidence, I cannot therefore properly ascertain whether the use claimed has been as a single dwellinghouse, which would warrant a four year immunity period. I will in any event proceed to assess the evidence provided in support of use as a Class C4 HMO as against the period claimed. To demonstrate the four years' use claimed by the appellant, the relevant date is on or before 27 February 2021.

Appellant's Evidence

17. To acquire immunity from enforcement action, use must be 'affirmatively established' over the relevant period and it must be assessed whether there was any time during that period (beyond de minimis breaks) when the LPA could not have taken enforcement action as the building was not actually occupied or used as claimed, even if available for such use.
18. Turning to the appellant's evidence, rental statements are provided from September 2016 to February 2025 referencing payment by 'Chariteens Residential Family Centre CIC'. Copies of commercial leases are submitted for the years 2016, 2020, 2021, and 2023 in respect of periods from September 2016 to September 2026 referencing 'Chariteens Residential Family Centre' as tenant with the 'permitted use' described as a 'residential family centre'.
19. No detailed explanation has been given as to how the permitted use stated in the commercial leases relates to the claimed HMO use. Further, the commercial leases do not provide any detailed evidence as to the number of occupants at the appeal property at any given time, nor any indication as to how the property was used in practice or whether there were any periods of significant vacancy over the claimed four years. Evidence of rental payment by Chariteens as lead tenant does not offer substantive evidence of continuity of use since presumably rent under the lead tenancy would have been payable even in the event that individual rooms were not occupied.
20. A copy of an AST is submitted also with the landlord as KJV Property Investments Limited and tenants stated as Mr CM and Ms RI⁸ in respect of the whole appeal

⁸ I have stated the initials only here

property for a one year less a day term commencing on 23 September 2017. The LPA points out that this AST overlaps with the term of the 2016 commercial lease referenced above, which has not been explained by the appellant.

21. Statutory declarations are given by the managing agent and Mr CM who identifies himself as 'tenant' of the appeal property. These are dated 8 December 2022 and 2 December 2022 respectively. Both statutory declarations are given essentially in the same form and reference 'constant use' of the appeal property as 'individual rooms (Flat/HMO)' with 'shared kitchen facilities' since 23 September 2016. The statutory declarations indicate that the use 'complies with the requirements' of the GPDO and that the declarations have been 'prepared' in accordance with guidance in Circular 10/97. There is though ambiguity in the reference to a 'Flat/HMO' use and a lack of detail in relation to the nature of the use in practice and whether the property was literally in 'constant use' as claimed or whether there were any periods of vacancy.
22. An insurance policy for the period July 2019 to April 2020 references the property as a 'House of Multiple Occupation Let to Charity' but it is unclear as to what information was provided in order to categorise the property as a HMO. A 2016 Inventory from the managing agent is also submitted which references a commercial lease agreement with a start date of September 2016. Email correspondence is submitted from 2016 with the Council's HMO Licensing Department in which exemption from 'Private Rented Property Licensing' was confirmed in respect of the appeal property. These documents do not provide any detailed evidence of how the property has been used in practice or offer any material weight in support of the claimed continuous use.

LPA submissions

23. The LPA references a refused planning application submitted in November 2016⁹ which was for a temporary change of use from Class C3 to Class C2 (residential family centre) and indicated that the then current use was as a C3 dwelling and that the property had been vacant since May 2016. The LPA takes the view that this contradicts the appellant's claim of a HMO use from September 2016. Another refused application¹⁰ submitted in March 2017 in respect of the same change of use indicated that the proposed change had not already started, which again is taken to contradict the claim of a HMO use starting in September 2016.
24. The LPA also makes reference to a statement on the lead tenant's website that 'Chariteens is an OFSTED registered Residential Family Centre...which provides court directed parenting and risk assessments for young parents and their babies where there are child protection concerns' providing 'accommodation, monitoring and assessments of up to six vulnerable parents and their babies or children within a local community setting'.
25. The LPA's assessment was that the documentation provided indicates a probability that the appeal property has been in use as a Class C2 residential institution, rather than a Class C4 HMO. While I do not have sufficient evidence before me to make a proper assessment as to the likelihood of a Class C2 use, these aspects do introduce further ambiguity into the appellant's evidence.

⁹ Ref: 16/03473/COU

¹⁰ Ref: 17/00786/COU

26. The appellant makes reference to other cases where LDCs have been granted in the Borough based upon what the appellant considers to be similar evidence to that presented in this case. These sorts of applications are though highly fact specific and I have assessed this case as regards the particular facts and evidence presented.
27. Drawing all of the above together, I find as a matter of fact and degree on the available evidence that the appellant has not demonstrated on the balance of probability that the appeal property has been in continuous use as a Class C4 HMO over the relevant period. The use claimed would not therefore have been lawful as at the date of the LDC application.

Conclusion

28. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for 'Existing Change of C3 Dwelling to C4 HMO (Retrospective)' 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