

**Report of the Chief Executive**

**APPEAL DECISION**

<b>APPLICATION NUMBER:</b>	<b>22/00236/CLUP</b>
<b>LOCATION:</b>	<b>17 Templar Road, Beeston, Nottinghamshire, NG9 2DX</b>
<b>PROPOSAL:</b>	<b>Certificate of lawfulness for proposed change of use from dwelling house (Class C3) to house in multiple occupation (Class C4)</b>

**APPEAL ALLOWED / COSTS AWARDED**

**RECOMMENDATION BY OFFICER – REFUSAL**

**REASON FOR REFUSAL**

On the date of the application the house was being used as a family home (dwellinghouse) falling within Use Class C3. The evidence provided failed to demonstrate that the property known as 17 Templar Road, Beeston, NG9 2DX would be occupied, before 26 March 2022 (date of Article 4 Direction), by persons who do not form a single household and therefore, the use as a House in Multiple Occupation ('HMO') had not been instituted at the time the Article 4 Direction came into force. The application for the proposed use as a HMO would therefore breach Section 192 (2) of the Town and Country Planning Act (1990).

**LEVEL OF DECISION: DELEGATED POWERS**

The inspector considered the main issues to consider were:

- Whether the Council's decision to refuse the LDC was well founded.

**REASONS**

Whether the Council's decision to refuse the LDC was well founded

This turns on whether, at the time of the application, the proposed change of use would have constituted permitted development and therefore granted planning permission by Article 3 and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). The planning merits of the proposal are not relevant.

Class L permits development 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.

There is no dispute between the parties that the property was Class C3 at the time of the application and there is no dispute that the proposed use was Class C4. Under s192(2), if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate

to that effect. This means that the relevant date is the date that the application was made.

The Article 4 Direction removing permitted development under Class L for a change of use from C3 to C4 did not come into effect until 26 March 2022. Therefore, the change of use, as described by the appellant, would have been lawful on the day that the application was made, i.e. on 16th March 2022 as the right under Class L still existed on that date.

This does not necessarily mean that a change of use would have been lawful if it occurred on or after the 26 March 2022. The Inspector's consideration in this matter is not whether the development would be lawful now. The Inspector's consideration is whether it would have been lawful on the date the application was made.

The Inspector notes the Council's point that the appellant did not provide evidence that the change of use occurred before the Article 4 Direction came into effect. However, there was no need for the appellant to do so because the consideration of the proposed use only relates to the date the application was made and a certificate would only confirm that the proposed change of use would have been lawful on that date.

## **CONCLUSION**

For the reasons given above the Inspector concluded, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development was not well-founded and the appeal should succeed.

## **COSTS AWARDED**

The Planning Practice Guidance (PPG) advises that irrespective of the outcome of an appeal, costs may only be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

The Inspector stated that the Council misapplied s192 of the Town and Country Planning Act 1990. The Council did not determine the application for the lawful development certificate (LDC) under the circumstances which existed on the relevant date. The relevant date was the date of the application, 16th March 2023.

Instead, it erroneously took account of the fact that the permitted development right to change the use of the C3 dwelling to a C4 house in multiple occupation would be removed at some point in the near future by the Article 4 Direction. That is not the correct approach under s192.

The failure of the Council to correctly apply the legislation amounts to unreasonable behavior which has resulted in unnecessary expense for the appellant in appealing against the refusal of the LDC.