

Report of the Chief Executive

APPEAL DECISION

<b>Application number:</b>	<b>22/00083/CLUE</b>
<b>Location:</b>	<b>58 City Road, Beeston, Nottinghamshire, NG9 2LQ</b>
<b>Proposal:</b>	<b>Certificate of Lawfulness for an existing use as a House in Multiple Occupation within Use Class C4</b>

**DECISION BY BROXTOWE BOROUGH COUNCIL - NOTICE OF REFUSAL OF CERTIFICATE OF LAWFUL USE OR DEVELOPMENT**

**REASON FOR REFUSAL –**

From the evidence available to the Council, it has not been established that the change of use from dwellinghouse (Class C3) to house of multiple occupation (C4) that falls within Class L Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, had occurred on or before 26 March 2022, (date of Article 4 direction).

**LEVEL OF DECISION: DELEGATED CERTIFICATE OF LAWFULNESS**

**APPEAL DISMISSED**

Planning Policy Background - Changes made to the Town and Country Planning (Use Classes) Order 1987 (UCO) in October 2010 allowed a change of use from a class C3 dwellinghouse to a Class C4 HMO (house in multiple occupation for up to 6 persons) without

the prior grant of planning permission. On 26 March 2022, the Council adopted a Direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). A change of use from Class C3 to Class C4 HMO which occurred from the 26 March 2022, therefore required express planning permission in areas which included the appeal site.

The Inspector considered the main issues to be whether the Council’s decision to refuse to grant a lawful development certificate was well founded. If the appeal property was in use as

a Class C4 HMO prior to 26 March 2022 when the Article 4 Direction came into force, it should be granted. The onus of proof lies with the appellant and the evidential test is the balance of probabilities.

The Inspector considered information and dates supplied by the applicant in relation to the dwelling, including its purchase, refurbishment and the period of occupancy by four individual occupiers / tenants. The Inspector noted information including agreements and payments, including that the terms of the agreements provided for rental payments of £520 each payable in advance but with the first payment due on 31 March 2022. The deposits of £500 each were to be paid on or before 14 March 2022, and that there was no explanation provided as to why rent and deposit payments were not payable in February if the tenants were in occupation in February 2022 and payments were due in advance.

The Inspector also noted that bank statements included in an email exchange show two transfers from a separate account of the appellant for the 24 March 2022 and 6 April 2022, and that the appellant refers to both transfers as being for rent rather than rent and deposits

and the occupiers paying in cash. The Inspector states that is not clear without further evidence how these payments relate to the actual occupation or dates specified in the agreement, and no statutory declarations have been provided by the appellant or the occupiers to confirm details provided.

In regards to the recommendations and decision, the appellant was asked to provide further evidence to the Council in late June 2022 and examples of the types of evidence that could be provided were listed and included proof of payment from the occupiers and 'affidavits.' Though the appellant states that he would have provided further information in the form of invoices, affidavits, rental income trail and invoices from agents had he been aware at the outset that these were required. Nevertheless, the appellant could have submitted further information and evidence as part of this appeal when the refusal notice refers to the evidence available not establishing that the change of use occurred before the 26 March 2022.

Whilst the appellant is frustrated with the Council's change of position, it is for the appellant to show on a balance of probabilities that his version of events is correct if an LDC is to be issued. As established in *Gabbitas v SSE & Newham LBC* [1985] JPL 630 and the Planning Practice Guidance (PPG) an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

The Inspector concludes, the appellant's evidence is not precise and unambiguous particularly with regard to when the change to Class 4 HMO use occurred. Although the appellant has referred to refurbishment works being carried out, the layout of the appeal property could also accommodate C3 single dwellinghouse use. The appellant has therefore not demonstrated on a balance of probabilities that the Class 4 HMO use did commence prior to the 26 March 2022. It may be that the appellant can produce such evidence but he has not done so for this appeal. Therefore, the Council's refusal to grant an LDC in respect of a change to a Class 4 HMO was well founded and that the appeal should fail.

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### 58 City Road, Beeston, Nottinghamshire, NG9 2LQ



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 Site

