

The complaint

Mr H and Ms H complain about the lack of transparency in The Mortgage Works (UK) Plc ("TMW") mortgage process and want the survey fee they paid refunded.

What happened

Mr H and Ms H are the owners of houses in multiple occupation ("HMOs") and applied for a remortgage with TMW on one of the properties. After a survey, TMW asked for certain permissions, some of which Mr H and Ms H could supply but others they couldn't. TMW asked for building regulation approval for a rear wall removal where a kitchen had been added. Mr and Ms H couldn't supply that as the work was done more than 20 years ago and before they owned the property. TMW requested C4 planning consent for a HMO as permitted development rights had been revoked by an Article 4 direction. Mr and Ms H say they can't supply that as they don't have it or need it. They say HMO planning permission is not required retrospectively in the area where the property is situated.

TMW said that before approving a mortgage, acting on the advice of its valuers it required in the absence of a specific planning approval or building regulation consent a Lawful Development Certificate and/or Regularisation Certificate for the removal of the kitchen wall. It also required prior to release of funds that the property has a C4(HMO) planning consent or established use as a 6-bedroom HMO. It said that in the absence of a specific planning approval, a Certificate of Lawful Use is required.

Our investigator didn't recommend that the complaint should be upheld as the evidence suggested that TMW considered the application fairly. Mr H and Ms H disagreed saying in summary that the real point is that no planning permission is required for an existing HMO in the area where the property is situated.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As is normal in mortgage applications, TMW appointed a valuer to advise it on the suitability of a property as security for a mortgage. Mr H and Ms H paid the non-refundable fee. The valuer was unhappy with elements of this application. I see that in July 2023 there was a discussion between TMW and Mr H and Ms H's broker about the planning issue. The valuer had said that planning permission was needed as a HMO and in the absence of a specific planning approval, a Certificate of Lawful Use was required. The broker said he wasn't happy about that and asked TMW to go back to the valuer about not needing C4 planning approval as a HMO licence was granted before that was required so it won't have it as the HMO predates the directive.

TMW emailed the valuer on 14 July:

"Please find attached/below PVQ referral for the above case and address. Broker has said that there wouldn't be any C4 planning as this directive came into being recently long after

the property began being used as a HMO - and as it has a HMO license which was granted its clearly got the correct planning - please can you comment on this"

The valuer responded as follows and this was sent to Mr and Ms H's broker on 28 July:

"Licensing and planning are separate entities. The fact that the property has an HMO licence does not confirm that the property has the relevant C4 planning use. Confirmation of planning use is required by way of a Certificate of Lawful Use."

Mr H cancelled the application on 31 July.

As I understand it, in the area where this property is situated, to turn a Class 3 dwelling house into a Class 4 HMO, following an Article 4 directive, a landlord would need to make a planning application to do so. But if the property was already in use as a HMO before the implementation of the Article 4 directive, that application wouldn't be necessary. The problem is that if the property was sold on again as a HMO, any new purchaser would look for evidence of planning permission or evidence of use. The valuer suggested that this evidential issue could be solved by getting a Certificate of Lawful Use. That would ease the future sale of the property, particularly in a forced sale situation and that's obviously an issue that would be a valid concern for a lender and for a valuer advising a lender. TMW engaged a valuer to advise it and it followed that advice. From my reading of the file Mr H and Ms H's objections to obtaining that Certificate seem to be one of principle in that it wasn't necessary rather than it couldn't be obtained so I've no evidence that this was an onerous condition that was imposed on them.

I also note that there were other issues that the valuer raised concerns about not all of which Mr H was able to satisfy TMW about before he withdrew from the application. Although I can understand Mr H and Ms H's objections, I would expect the lender to follow the advice of its valuer. It raised Mr H and Ms H's concerns and objections with the valuer but was told that a Certificate of Lawful use was required before the loan should be approved. So, I can't fairly hold TMW at fault for following the advice of an appropriately qualified valuer and I don't uphold this complaint or require TMW to refund the valuer's fee.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Ms H to accept or reject my decision before 7 May 2024.

Gerard McManus
Ombudsman