

Appeal Decision

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an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 May 2020

Appeal Ref: APP/Z4310/X/19/3240695

42-44 Rice Lane, Liverpool L9 1DD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mohamed Adjeel against the decision of Liverpool City Council.
 - The application Ref 19LP/1581, dated 4 May 2019, was refused by notice dated 24 September 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which an LDC is sought is, as described on the application form, 'to provide HMO accommodation for 6 no. persons from previous dual use of residential flats and commercial premises'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by Mohamed Adjeel against Liverpool City Council. This application is the subject of a separate Decision.

Preliminary Matter

3. Travel restrictions are, at this time, in place due to the COVID-19 pandemic. However, a decision can be reached based on the information submitted by the main parties and a site visit is not necessary. The parties were consulted and neither party indicated that this approach was not appropriate.

Reasons

4. The Appellant is seeking to establish whether the conversion of the appeal property to wholly Class C3 residential use would be lawful under permitted development rights. The application, as stated on the application form, was for a change of use to HMO accommodation, which is a Class C4 use not a Class C3 use. There are no permitted development rights for conversion of a property to Class 4 HMO accommodation. This was pointed out to the Appellant's Agent, by the Council, in an e-mail dated 15 July 2019 along with a request that "Can you please clarify what you are seeking?". In response the Agent stated that "...we seek a lawful development certificate to convert the long-time vacant sui generis/mixed use property (retail/residential) to 6 self-contained flats (C3 use)".

5. The proposed use is consistent with the application drawings, which show six self-contained flats, and the previous use is consistent with the application form which states, in section 5 and with regard to the last known use class, that this was 'commercial use to ground floor benefitting from A1 use with C3 use dwellinghouse at 1st floor level'; Class A1 being 'Shops'. It is also worth noting that an existing ground floor plan submitted with the application indicated that the appeal property was, principally, two commercial units with a total retail floor space of about 120 square metres.

6. The Council proceeded to determine the application, on the basis of the last known use class being a mixed Class A1/Class C3 use, with reference to Class M of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO); which provides for the change of use of a building in, amongst other things, a mixed Class A1/Class C3 use to a wholly Class C3 use. This is the change of use that the Agent clarified was being sought. In a later communication the Agent appeared to accept the Council's stance that the proposed development should be judged against Class M of the GPDO and refers to 'retail areas', 'retail ground floor space' and 'vacant retail space'. In an e-mail to the Council dated 27 July 2019 the Agent again refers to 'existing retail units', and in an e-mail dated 16 September 2019 he rebuts a suggestion by the Council that "...the property benefits from industrial use...".

7. In the e-mail dated 27 July 2019 the Appellant's Agent requested that the application, on the advice of the Planning Officer, be considered on the basis that it was for the proposed conversion of the ground floor retail units to three residential units. In this regard it had been accepted that the lawful and last use of the first floors of the properties was residential and that, therefore, no change of use is required to create three residential units at that level. The Council proceeded to consider the application on the basis that it was for 'proposed change of use of ground floor areas to 42 and 44 Rice Lane to 3 no. self-contained flats'.

8. The Council would have been alerted to the possibility that the last use of the ground floor of the combined property might have been an industrial use rather than a retail use by the statement, in section 4 of the application form, that the "Previous use at ground floor level for wrought iron fabrication use vacant for over 15 years...". In this regard, information provided in section 4 and section 5 of the application form is contradictory.

9. The Council would also have been alerted to the possibility that the last use of the ground floor of the combined property might have been an industrial use by a sign on the Rice Lane frontage of the property. A Google Streetview photograph taken in August 2019, when the Council were considering the application, shows a sign advertising 'A & D Gates & Railings - Walton Wrought Iron Centre'.

10. The onus of proof in an LDC application or appeal falls on the Applicant or Appellant. He must provide sufficient precise and unambiguous evidence to justify a conclusion, based on the balance of probabilities, that an LDC should be granted. The evidence provided with the application is contradictory and far from precise and unambiguous. Taking into account the information provided in section 4 of the application form and the existence of the sign on the frontage of the property, the Appellant is required to provide compelling evidence that the last use of the ground floor of the appeal property was retail. This has not been provided.

11. The application was refused because the Council took the view that "...the units were last used as a wrought iron fabrication workshop under use classes B1 and B2...". This was not an unreasonable conclusion, based on the evidence, to reach. In these circumstances Class M of the GPDO is not relevant and it is not surprising that the Council found that the proposed use of the two properties "...is not permitted by Class M...".

12. Despite rebutting the Council's claim that "...the property benefits from industrial use..." the Agent maintains that they should, having taken the view that "...the units were last used as a wrought iron fabrication workshop under use classes B1 and B2...", have considered the application against the provisions of Class PA of Part 3 of Schedule 2 of the GPDO. Class PA relates to the change of use of a building falling within Class B1(c) 'Light Industrial' use to a use falling within Class C3 'Dwellinghouses'.

13. Development is not permitted by Class PA if, under proviso (b), "...the building was not used solely for a light industrial use on 19 March 2014...or when it was last in use". There may be doubt about the last known use of the ground floors of the two properties but there is no doubt that the first floors were last used as residential accommodation. In this regard the two properties were not last 'used solely for a light industrial use'; the crucial word being 'solely'.

14. The Appellant's case, through his Agent, is imprecise and ambiguous and has failed to clearly establish the last known use of the ground floors of the appeal properties. There is insufficient precise and unambiguous evidence to conclude, even on the balance of probabilities, that the proposed use of the ground floors of the properties as three self-contained flats is development permitted by the GPDO.

15. For the reasons given the Council's refusal to grant an LDC was well-founded and the appeal fails. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector