



Appeal Decision

Site visit made on 28 February 2022

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 21 March 2022

Appeal Ref: APP/Z4310/X/21/3286085

44 Thornycroft Road, Liverpool L15 0EW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Nicholas Kollakis of Nasitra Ltd against Liverpool City Council.
- The application (Ref 20LE/2714) is dated 23 October 2020.
- The application was made under section 191(1)(a) of the 1990 Act as amended.
- The use for which a certificate of lawful use or development is sought is "Application for Lawful Development Certificate for use of existing property as small HMO (within Use Class C4).

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

1. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case. For the avoidance of doubt, the planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.
2. The Council has provided a copy of a Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) relating to the area in which the appeal premises is located. This has the effect of revoking 'permitted development' rights conferred by Article 3 and Schedule 2, Part 3, Class L(b) - development consisting in the change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 to a use falling within Class C4 (houses in multiple occupation). The Article 4(1) Direction was confirmed on 17 June 2021 and came into force on that date, after the date of the application. If permitted development rights were being relied upon, I would need to consider the relevant statutory instrument in force, and any revocations, on the date the change of use took place, which the appellant states was September 2004.

3. However, in this case, the appellant is seeking to demonstrate lawfulness through the passage of time that has elapsed since the material change of use occurred. Section 191(2) of the 1990 Act provides that uses are lawful at any time if no enforcement action may be taken in respect of them ... because the time for enforcement action has expired. Under section 171(B)(3), which concerns any other breaches of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. Therefore, I must consider whether the appellant has shown, on the balance of probabilities, that a material change of use to a small House in Multiple Occupation (HMO) occurred on or before 23 October 2010 (10 years prior to the date of the application) and that use continued after the date of change for 10 years, without significant interruption¹.

Main Issue

4. The application was seeking to establish that the use of the building as a small (HMO), with four letting rooms, was lawful at the date of the application. The main issue is whether the Council's deemed refusal to grant a lawful development certificate was well-founded.

Reasons

Evidence

5. The appeal property is a two-storey terraced house within a road of similar residential development. The house is in use as a small HMO and is occupied by four students.
6. The applicant submitted a Statutory Declaration under the Statutory Declarations Act 1835. This stated that Nasitra Ltd, the applicant's company, acquired the appeal premises in August 2003. The property was refurbished and let to a group of four students from September 2004. It is stated that the property has been occupied as such since that date. The Statutory Declaration is duly signed and witnessed and carries substantial weight as sworn evidence.
7. Further supporting evidence includes a licence to let the property, which was granted to the managing agent MGM Letting Ltd on 5 September 2016; letting agreements and payment schedules 2018/19, 2019/20, 2020/21, 2021/22; and Council Tax bills showing exemptions for students in occupation 2014/15, 2015/16, 2016/17, 2018/19, 2019/20, 2020/21, 2021/22.

Analysis

8. The Council accepts that it considers the evidence demonstrates the property has been in use as a 'C4 HMO' and the use has been proven as being lawful². I agree that the appellant's evidence is sufficiently precise and unambiguous. There is no other information before me to make the appellant's version of events less than probable.

¹ *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226. The Courts have ruled that it is necessary to demonstrate there was no significant interruption in the use during the relevant period, since during any such periods the Council would have been unable to take enforcement action.

² Email to appellant's agent dated 18 August 2021.

Conclusion

9. I find that the appellant has shown, on the balance of probabilities, that a material change of use to a small HMO occurred on or before 23 October 2010 and that use continued after the date of change for 10 years, without significant interruption, such that the use has become lawful through the passage of time.
10. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the use of existing property as small HMO (within Use Class C4) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

11. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Debbie Moore

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 23 October 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has shown, on the balance of probabilities, that a material change of use to a small House in Multiple Occupation occurred on or before 23 October 2010 and that use continued after the date of change for 10 years, without significant interruption, such that the use has become lawful through the passage of time.

Signed

Debbie Moore

Inspector

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First Schedule

Application for Lawful Development Certificate for use of existing property as small HMO (within Use Class C4).

Second Schedule

Land at 44 Thornycroft Road, Liverpool L15 0EW

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 21 March 2022

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Scale: NTS

