



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/21/3288568

38 Liscard Road, Liverpool L15 0HH

- 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 O McKinley against Liverpool City Council.
- The application (Ref 21LP/1721) is dated 6 June 2021.
- The application was made under section 192(1)(a) of the 1990 Act as amended.
- The use for which a certificate of lawful use or development is sought is "The proposed use under C4 from its current lawful use as a C3 dwelling house, is confirmed as permitted development under Schedule 2, Part 3, Class L (small HMOs to dwelling houses and vice versa) of the current GPDO".

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.

Costs

1. An application for costs was made by Mr O McKinley against Liverpool City Council. This application is the subject of a separate decision.

Preliminary Matter

2. 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.

Main Issue

3. The application was seeking to establish that the use of the building as a small 'House in Multiple Occupation' (HMO) would be lawful if it were instituted or begun on 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

4. Section 191(2) of the 1990 Act provides that uses are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason). The appellant sought an LDC for the proposed use of the property as a small HMO, with six letting rooms, on the basis that the change of use would be lawful as it would not require planning permission. It is argued that the development would fall within that 'permitted' under Article 3 and Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO); development consisting of a 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 as amended, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.
5. The Council acknowledges the proposed change of use would have been lawful on the date of the application, stating "it is clear that on the date the application was received the change of use would likely be acceptable and therefore would have been granted as lawful". However, my attention is drawn to a Direction made under Article 4(1) of the GPDO relating to the area in which the appeal premises is located. This has the effect of revoking 'permitted development' rights conferred by Schedule 2, Part 3, Class L(b). The Article 4(1) Direction was confirmed on 17 June 2021 and came into force on that date. Thereafter, planning permission would be required for a change of use from Class C3 dwellinghouses to Class C4 small HMOs.
6. The application sought to establish the proposed use would be lawful if instituted or begun on the relevant date, that is the date the application was made. Regard should be had to the provisions of the GPDO on the relevant date. Crucially, the provisions relating to Class L(b) had not been revoked when the application was made and the proposed change of use would have been lawful.

Conclusion

7. I conclude that the appellant has shown, on the balance of probabilities, that the use of the building as a small HMO (Class C4) would be lawful if it were instituted or begun on the date of the application.
8. 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 proposed use of the property as small HMO (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

9. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Debbie Moore

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 6 June 2021 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has shown, on the balance of probabilities, that the use of the building as a small HMO (Class C4) would be lawful if it were instituted or begun on the date of the application.

Signed

Debbie Moore

Inspector

Date: 21 March 2022

Reference: APP/Z4310/X/21/3288568

First Schedule

The proposed use under C4 (small HMO) from its current lawful use as a C3 (dwelling house)

Second Schedule

Land at 38 Liscard Road, Liverpool L15 0HH

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

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

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Scale: NTS

