



Appeal Decision

Site visit made on 14 March 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 25 March 2022

Appeal Ref: APP/Z4310/X/21/3285731 40 Rocastle Close, Liverpool L6 1PJ

- 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 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 R Rothschild of Rocastle Limited against Liverpool City Council.
- The application (Ref. 21LP/1687) is dated 23 May 2021.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is described in the application form as 'C3 – Dwellinghouses'.

Summary 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. The proposed change of use is described in the application form as being from a dwellinghouse falling within Class C3 of the Use Classes Order to a dwellinghouse falling within the same Class. The appellant's appeal form gives, as the precise description of the proposed use, the 'proposed use of the dwelling house for up to six living together as a single household'. That describes a use falling within Class C3(c).
2. The appellant's supporting statement suggests that what is in fact sought is a certificate confirming the lawfulness of a proposed change to use as a house in multiple occupation by not more than six residents, by reference to Class C4 of the Use Classes Order. That is also the description applied by the Council's appeal statement.
3. The applicant is required, on an application under section 192, to give a full, clear and precise description of the proposed use for which a certificate is sought. There is considerable ambiguity in the appellant's submission, but the Council has considered the proposed use as that of a house in multiple occupation in Class C4. As that is the use to which the appellant's statement also appears directed, I shall consider the appeal on that basis. Whilst there is no equivalent power in section 192 to that under section 191(4) to modify the terms of an application, the common approach of the parties here appears to be to consider whether a use falling within Class C4 would be lawful if instituted at the time of the application.
4. Reference is made in the parties' cases to proposed rooflights. The application form stated that no operations or change of use was involved in the proposal.

The appeal form refers only to a proposed use. I do not propose to consider the lawfulness of any operations as they are not expressly included in this application or appeal.

5. There are conflicting accounts as to whether, at the time of the appeal, the application had been registered or validated for consideration by the Council. The application reference above is taken from the Council's appeal statement.
6. The application form is dated 23 May 2021 but is acknowledged by the appellant to have been submitted on 3 June 2021. Section 192 of the 1990 Act requires consideration of whether the proposed use would be lawful if instituted 'at the time of the application'. Nothing appears to turn on the difference in these dates but I consider 3 June 2021 to be the relevant date for assessing lawfulness.

Application for costs

7. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issue

8. The main issue in the case is whether the Council's deemed refusal to grant a certificate was well-founded.

Reasons

9. I am informed by the parties that an Article 4 Direction came into force in mid-June 2021, with the effect of restricting certain permitted development rights. It is said to include restricting the right to make a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order to a use falling within Class C4 (houses in multiple occupation) of that Schedule. That right is otherwise conferred by article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') read together with Class L of Part 3 of Schedule 2 to the Order.
10. There appears no dispute that the property has been used as a Class C3 dwellinghouse. That was stated to be the existing use of the property at the time of the application. The Article 4 Direction was not in force at the date of the application for a lawful development certificate, or on the date when the application was submitted. That latter date, as I have set out above, is the relevant date by which the lawfulness of the proposed use must be assessed.
11. Section 192(4) states that the lawfulness of any use for which a certificate is in force shall be conclusively presumed unless there is a material change, before the use is instituted, in any of the matters relevant to determining such lawfulness. Whether or not the coming into force of the Article 4 Direction before the use was instituted (if it did, about which I have no information) amounts to such a 'material change' is not for me to decide here.
12. I am not informed whether the use was instituted before the Article 4 Direction came into force (and thus what value any certificate could have) but that is not the issue before me. As the Council concede, the proposed change of use would have been lawful (because permitted by the Order) on the date of submission of the application. Therefore their deemed refusal of the application was not well-founded and I shall grant a certificate.

Conclusion

13. 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 40 Rocastle Close, Liverpool L6 1PJ as a house in multiple occupation by not more than six residents (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

14. 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 if instituted on the date of submission of the application.

Laura Renaudon

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 3 June 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Permission for the proposed use was conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Laura Renaudon
Inspector

Date: 25 March 2022
Reference: APP/Z4310/X/21/3285731

First Schedule

Use of a dwellinghouse by not more than six residents as a "house in multiple occupation" falling within Class C4 of the Use Classes Order.

Second Schedule

Land at 40 Rocastle Close, Liverpool L6 1PJ

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 /operations 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 /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule. Any use /operation 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.