
Appeal Decision

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

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

Decision date: 4 August 2022

Appeal Ref: APP/Z4310/X/22/3291690

284 Anfield Road, Liverpool L4 0TJ

- 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 Mr Leo Suarez against the decision of Liverpool City Council.
 - The application Ref 21LE/2984, dated 7 October 2021, was refused by a notice dated 26 January 2022.
 - The application was made under section 191(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 6-bedroom House in Multiple Occupation (HMO).
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Decision

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

Procedural Matters

2. Considering the matters at appeal it was not necessary to visit the appeal premises. The main parties agreed that I can reach a decision based on the representations and supporting information submitted by them as a matter of course as part of the application and appeal process.
3. Section 191 (4) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal.

Main Issue

4. In order for a Certificate of Lawfulness (LDC) to be granted under section 191 of the Act, the burden of providing facts in this appeal rests on the appellant, and the test is the balance probability. If there is no evidence to contradict or make the appellant's version of events less than probable, and the appellant's evidence alone is sufficiently precise and unambiguous, a LDC should be granted. The main issue is whether the Council's decision to refuse to grant a LDC of existing use or development was well founded.

Reasons

5. The appellant considers that the change of use of the appeal premises to a use falling within Class C4 (house in multiple occupation (HMO)) benefited from planning permission granted under Class L, Part 3, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
6. Development consisting of 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 is permitted by Class L(b), Part 3, Schedule 2, Article 3 of the GPDO.
7. On the 17 June 2021 the Council in pursuance of the powers conferred upon it by Article 4(1) of the GPDO confirmed a Direction that the permission granted by Article 3 of the GPDO shall not apply to development consisting of 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, within Anfield Electoral Ward, amongst other locations, identified within the First Schedule of the Direction. Therefore, for the use of the appeal site as a Class C4 HMO to be lawful, the change of use must have taken place prior to the Article 4(1) Direction being confirmed i.e., 17 June 2021.
8. The appellant states that the property was purchased in October 2020 with conversion works starting immediately. The conversion of the property to an HMO was finished on 21 February 2021 and ready for occupation by 24 February. He states that the property was fully occupied by six tenants by 13 April 2021. In support of his appeal the appellant has provided documented evidence, including copies of Assured Short Term Tenancy Agreements (AST) and bank statements showing payment to contractors and receipt of rent from tenants. Details of the HMO licences approved have also been provided.
9. Copies of bank statements show transactions to property developers in October, November, December 2020, January and February 2021 all referenced 284 Anfield Road. Furthermore, Gas and Electrical Safety Certificates have been provided which are dated January 2021. An initial HMO licence was granted on 26 March 2021. This evidence is consistent with the appellant's claim that work commenced on the conversion in October 2020 and was completed in February 2021.
10. In addition, signed AST for each of the tenants have been provided. The AST's are dated 24 February 2021, 1 April 2021, 7 April 2021, 17 April 2021 and 19 April 2021 respectively. For each of those agreements there is evidence of a corresponding and referenced first payment of rent and/or deposit within copies of bank statements.
11. The documented evidence set out above supports the appellant's claim that the change of use to a Class C4 HMO took place in February 2021. The change of use therefore occurred before the Council confirmed the Article 4 (1) Direction which removed the relevant permitted development rights as set out in the paragraphs above. Furthermore, the Council has not provided any evidence to contradict the appellant's evidence or suggest that his version of events is less than probable. I am satisfied that the appellant's evidence alone is sufficiently

precise and unambiguous to establish that the use of appeal premises as a Class C4 HMO is lawful.

Conclusion

12. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use as a 6-bedroom HMO was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195 (2) of the 1990 Act as amended.

Elizabeth Pleasant

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 7 October 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use took place prior to 17 June 2021 and was “permitted development” falling within Class L (b), Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for which planning permission is granted by Article 3(1) of that Order.

Signed

Elizabeth Pleasant

INSPECTOR

Date 4 August 2022

Reference: APP/ Z4310/X/22/3291690

First Schedule

Use as a 6-bedroom House in Multiple Occupation (HMO).

Second Schedule

284 Anfield Road, Liverpool L4 0TJ

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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 and identified on the attached plan. 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 4 August 2022

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Land at: 284 Anfield Road, Liverpool L4 0TJ

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Scale: Not to Scale

