



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 03 October 2022

Appeal Ref: APP/Z4310/X/22/3300484

50 Granville Road, Picton, Liverpool L15 2HR

- 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 refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Emperor Property against the decision of Liverpool City Council.
 - The application Ref 21LE/1850, dated 10 June 2021, was refused by notice dated 16 May 2022.
 - 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 existing use of premises as a house in multiple occupation for 3-6 persons (Use Class C4).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I consider that the appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.
3. 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.
4. 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. Similarly, the Council's alleged mismanagement of the application is not pertinent to the matters before me. 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.
5. The application was seeking to establish that the use of the building as a small house in multiple occupation (HMO), within Class C4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, was lawful at the date of the application. 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 they did not require planning permission.

6. The appellant's case is that the change of use to a small HMO comprised development 'permitted' under Article 3 and Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This concerns the change of use of a building from a use falling within Class C3 (dwellinghouses) to a use falling within Class C4 (houses in multiple occupation).
7. The Council has provided a copy of 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 Direction was confirmed on 17 June 2021 and came into force on that date. The dispute between the parties is whether or not the change of use took place before the Article 4 Direction came into force, in which case it would have been lawful.

Main Issue

8. I must decide whether the use of the building as an HMO for 3-6 persons (Use Class C4) was lawful on the date of the application. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

Evidence

9. A Sworn Statement, dated 16 August 2021 and submitted on behalf of the appellant, states that the property was acquired in January 2021 and had been occupied as an HMO from 2019. It also provides dates of the relevant tenancy agreements; four in total dated April and May 2021. A further Sworn Statement, dated 30 September 2021, sets out that the property was operating as an HMO prior to purchase and was occupied by four tenants.
10. Assured Shorthold Tenancy Agreements (ASTs) for Room 1 dated 29 April 2021, Room 2 dated 19 April 2021, Room 3 dated 14 April 2021 and Room 4 dated 30 April 2021 have been submitted along with certificates of tenancy deposit protection, which detail tenancy start dates of April and May 2021. Floor plans have been provided showing one bedroom on the ground floor with a living room and kitchen, and three bedrooms on the first floor with a bathroom.
11. The Council has provided evidence of its own by way of emails from local residents, which it reproduced in the officer delegated report. One of these states that the appeal premises was a family home until July 2021 and was occupied as such. A further email from a different local resident states that the premises was occupied by a family who had only recently moved out and the house was unoccupied in August 2021. It is specified that the family were living in the property in May 2021 as a conversation was remembered. It is thought that they moved out in May or early June. Further, it is stated that a builder started work on the property to create four bedrooms and build an extension. A photograph is referenced but that has not been provided.
12. A neighbour responding to the appeal notification has stated that the property was a family home and conversion works started in February 2022, which was ongoing in August 2022.

13. The Council's Building Control team have stated – "We received a Building Notice application on the 04.01.22 for the following work – Single Storey Extension to the rear with a dormer, renovation/conversion to create 6 bed HMO. Please note this only became valid on the 04.03.22 when they paid the application charge. We have undertook [sic] one inspection on the 17.02.22 and this was to inspect the foundations to the extension, no other inspections are detailed on the system". The appellant maintains that the property was in use as an HMO prior to their purchase in January 2021 and notes that the Building Control description provided in their consultation response is inaccurate. The actual application was a "Single Storey rear extension. Loft conversion with dormer. Internal alterations."

Analysis

14. The sworn evidence states that the property was purchased in January 2021. It is claimed that it was, at that time, occupied by three separate households but the appellant decided not to renew their tenancies. The evidence is very limited and there is nothing to support the claim that the property was in use as an HMO prior to acquisition.
15. The ASTs and deposit certificates show an intention to let the property from 14 April 2021 but do not, in themselves, provide any evidence of occupation, such as utilities bills, council tax records or sworn evidence from the occupants. Moreover, it has been claimed by at least one resident and the Council's enforcement officer that the property was empty in the summer of 2021. The ASTs were for an initial period of six months so, had the tenants moved in, it would be unlikely that they would all vacate the property three months later. The appellant says that the tenants moved out in the autumn and that the neighbours and council officers are mistaken.
16. I am mindful of relevant caselaw, in particular the Supreme Court judgment in *Welwyn Hatfield BC*¹. Lord Mance held that "too much stress... [has] been placed on the need for 'actual use'...it is more appropriate to look at the matter in the round and to ask what use the building has or of what use it is." Thus, it is incorrect to regard the commencement of use as automatically giving rise to the change of use or, conversely, to conclude that there had not been a change of use because the building was not actively occupied.
17. The parties also refer to the High Court judgment in *Impey*², which concerned the conversion of dog kennels to residential accommodation. In that case, the Secretary of State had concluded that there was no breach of planning control, as the former kennels had not begun to be used for their new purpose. The Court held that Secretary of State was entitled to say that, on the evidence, there had been no change of use, but was wrong to say, as the wording of the decision letter implied, that the fact that the permission had not begun to be used was crucial. It was held that this was important, but not decisive.
18. Taking account of the relevant caselaw, I must also have regard to when the building was capable of being used as a small HMO, as a matter of fact and degree, bearing in mind that it is possible to find that a change of use took place before the building was actually occupied. 'Actual use' remains a factor, but it is necessary to look at the evidence in the round. This includes the

¹ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15.

² *Impey v SSE & Lake District SPB* [1981] JPL 363, [1984] 47 P&CR 157 and *Backer v SSE* [1983] JPL 167.

former use of the building, the physical state of the building at the relevant date, the actual use of the building at that date, the intended use and the whole chronology.

19. There seems to be an intention to let the property and I accept that building works were not necessary to make the property suitable for use as a small HMO. However, as explained above, the evidence in support of the claimed use is limited. Such evidence could include active marketing of the property for letting, the relevant certification required for use as an HMO or receipts for the purchase of appropriate furniture. Further, there is significant ambiguity as to whether the house was, in fact, used as a family home at the date of the application. The appellant's sworn evidence carries due weight but it lacks detail. The anomaly about whether the property was occupied during the summer, and by whom, is not adequately explained.
20. Overall, the appellant's evidence is not sufficiently precise and unambiguous and it lacks relevant detail. It has not been shown, on the balance of probabilities, that the use of the building as a small HMO was lawful at the date of the application.

Conclusion

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of the premises as a house in multiple occupation for 3-6 persons (Use Class C4) was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Debbie Moore

Inspector