
Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 17 November 2022

Appeal Ref: APP/Z4310/X/22/3292192

2 Oakbank Road, Liverpool L18 1HS

- 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 Stuart Barnes against the decision of Liverpool City Council.
 - The application, Ref 21LE/2494, dated 2 July 2021, was refused by notice dated 4 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 an existing HMO usage for 5 people.
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Decision

1. The appeal is allowed and a Lawful Development Certificate is attached below.

Introduction

2. The LPA indicates that it was only able to assess and determine the LDC application based on the information provided by the applicant and that, in the absence of any signed agreements and/or sworn affidavits, insufficient evidence had been submitted to allow the LPA to issue a certificate. It was concluded, therefore, that the information submitted did not demonstrate that the premises had been occupied, by 3 to 6 persons, prior to an issued Article 4 Direction which came into effect on 17 June 2021.

3. At this appeal stage the appellant has submitted further information including fully signed Assured Tenancy Agreements (ATAs). The Council stress that these were not submitted as part of the LDC application and *'have not been subject to any form of public consultation where that evidence may be challenged by a third party'*. It is contended that this information cannot be considered in this appeal and that the appellant should submit a further application with the additional information included.

4. I disagree. In this case I consider that all of the information submitted should be taken into account. My reasons for this are as follows. Section 195 of the Act refers only to a refusal being *'well-founded'* or *'not well-founded'*. This relates to the LPA decision itself and not to the reasons for refusing an application. In the case of *'Cottrell v SSE and Tonbridge and Malling BC [1982] JPL 443'*, it was held that the Secretary of State cannot be compelled to issue a certificate where the opinion is that one should not be granted.

5. However, conversely it was also held by the court that, for a LPA to argue that the only evidence to be considered was that placed before them as part of the initial application, denies the purpose of the LDC procedure. The LDC procedure is aimed at the decision-maker arriving at an objective decision (on the balance of probabilities) based upon the best facts (my underlining) and all of the evidence available. As acknowledged by the LPA it is also the case that if subsequent information becomes available it is always open to an applicant to re-apply.

6. Through the Planning Inspectorate Case Officer I requested that the LPA be provided with all of the appellant's additional information and they were given the opportunity to respond to the new documents. The Council has now agreed that the new documents show that the ASTs submitted are now signed and that this '*may mean that a certificate could be issued when taken with the other evidence*'. However, again the Council refers to consultations being necessary and that the appellant should submit a new application.

7. I disagree with the LPA in this respect. Having seen all of the submissions and having considered the evidence submitted by others to the Council, I consider that a decision can be made, on the balance of probabilities, as to whether or not a Certificate should be issued. The Council and the Appellant have also agreed that the appeal could be dealt with without the need for a formal site visit. In dealing with the appeal as set out above, I am satisfied that no injustice will be caused.

Background information and the cases for the parties

The appeal property

8. The appeal property is a brick built, two-storey, end of terrace dwellinghouse located on the north side of Oakbank Road. It lies close to the junction with Greenbank Road and to the north of Greenbank Park. This is a predominantly residential area of Liverpool and, as referred to above, on 17 June 2021 an Article 4 Direction (A4D) was issued by the Council which removed permitted development rights for a change of use from a Class C3 dwellinghouse to a small House in Multiple Occupation (HMO), in Class C4.

The gist of the case for the Appellant

9. The appellant contends that that the property has been used as an HMO since 2003 and that various HMO licenses had been applied for and issued by the Council. It is stressed that to achieve the licence issued for 2016-2020 an Assured Shorthold Tenancy (AST) was required, as well as the appropriate safety licences and a licence officer visit/inspection .

10. It is indicated that the latest AST for 5 people living at the property was signed on 19 March 2021 and the appellant then applied for a new HMO licence to cover this AST. No licence was issued for 2020-2021, as it is indicated that there were only 4 occupants. The new licence application was accepted by the Council's HMO office who then informed the appellant of the A4D issued on 17 June 2021 and that a LDC was required. At that time the appellant indicates that there were 4 tenants sharing the property and that there were individual ASTs dating from July 2020 to June 2021. A new AST for 5 tenants had also been signed on 19 March 2021 (for the period 1 July 2021 to 29 June 2022).

11. When this LDC application was made the HMO licence evidence was provided along with the current AST. As indicated above the application was submitted on 2 July 2021 but it was not until 26 November 2021 that a response was received from

the LPA. This was in the form of an e-mail and requested further ASTs from 2014 until the present date. It is indicated that these were forwarded to the LPA on 1 December 2021. However, it stated that these were not '*received correctly*' and were not accepted as part of the evidence in relation to this LDC application.

12. The appellant indicates that he was not informed of the problem by the LPA and that, if this had simply been a technical issue, the matter could have been resolved. It is stressed that the additional ASTs were '*of the exact format as ones previously submitted and clearly marked Page 1 of 23, Page 2 of 23 etc on the corner of each page,*' therefore easily identifiable, even if incomplete.

13. It is also indicated that the planning officer's report for the LDC application dismisses the 2021 AST as evidence on the basis that the AST was '*signed after the Article 4 came into being on 17 June 2021*'. It is stressed that this is not true, as it was actually signed on 19 March 2021, some 3 months prior to the issue of the A4D. It is also contended that the officer's claim that the HMO evidence was not valid evidence is also incorrect in that HMO are not issued without '*the proof/requirement/inspection and require advance HMO safety standards to be met*'.

14. The appellant contends that the LDC application was simple and straightforward and that he would have liked the opportunity to have worked with the planning officer and to have been given the ability to rectify any minor issues within the 13 week or 26 week statutory timescales. It is stressed that the Council breached these Government statutory time limits taking 27 weeks to reach a decision on the application with only the bare minimum of correspondence.

15. The appellant indicates that, following the refusal of the LDC the planning officer indicated, in a letter dated 4 January 2022, that the only option was to appeal the decision. However, on 13 January 2022, the enforcement officer e-mailed the appellant informing him of a different time scale and suggesting that the issue might be resolved if further information was submitted. However, this option was then refused by the LPA who requested that a further application be made.

The gist of the case for the Council

16. As indicated above the Council refused the application on the basis of what was before them and without considering the additional information. If this had been the totality of the evidence then I agree with the LPA that the appellant had not demonstrated that the dwellinghouse had been in use as a Class C4 on the date of the A4D (17 June 2021).

17. Following my request for comment on the additional submissions the Council has responded and as indicated above that the new documents show that the ASTs submitted are now signed and that this '*may mean that a certificate could be issued when taken with the other evidence*'.

My Assessment

18. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered and the development plan policies are not relevant.

19. Planning Practice Guidance (PPG) confirms that it is the responsibility of the applicant to provide proof of lawfulness. It sets out the following:

'The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter- evidence.'

'In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability'.

20. The question in this case is whether or not it has been demonstrated that the house had been occupied as a Class C4 HMO before 21 June 2021 when the A4D was issued.

21. The evidence indicates that, at that time, there were 4 tenants sharing the property and that there were individual ASTs dating from July 2020 to June 2021. A new AST for 5 tenants had also been signed on 19 March 2021, for the period 1 July 2021 to 29 June 2022.

22. Having considered all of the evidence submitted at the time of the LDC application, plus the evidence now submitted at this appeal stage I consider that, on the balance of probabilities, the house was occupied as a Class C4 HMO well before the 21 June 2021. It follows that, at that time, the use was lawful and the LPA could not have taken enforcement action against the use. I shall, therefore, issue a LDC which is attached below.

23. In reaching my decision I have taken into account all of the submissions made by interested persons/third parties. However, like the Council's evidence, none relevantly counters the appellant's submissions to the extent that it contradicts or otherwise makes the appellant's version of events less than probable.

24. I acknowledge the issues surrounding the level of HMOs in this part of Liverpool. Nevertheless, the evidence in relation to this particular property clearly shows that it was in use as such before the issue of the A4D and that the Council could not have taken enforcement action against the use.

Formal Decision

25. The appeal is allowed and a Lawful Development Certificate is attached below.

Anthony J Wharton

Inspector



The Planning Inspectorate

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 2 July 2021, the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken against the use being carried out.

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Inspector

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First Schedule

The use as a Class C4 House in Multiple Occupation (HMO).

Second Schedule

2 Oakbank Road, Liverpool L18 1HS

Notes:

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

It certifies that the development described in the First Schedule, at the property 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 development described in the First Schedule; to the property specified in the Second Schedule and as shown on the Location Plan submitted with the LDC application Ref:TQRQM21183143615411, Scale:1250, dated 2 July 2021.

Any other development or use which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.