The Planning Inspectorate

Appeal Decision

Site visit made on 8 November 2022

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/22/3292897
60 Ampthill Road, Liverpool L17 9QW

- 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 N Colquhoun against Liverpool City Council (LCC).
- The application, Ref 21LE/1851, dated 10 June 2021, was refused on 4 February 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 the existing use of the property as a Sui Generis Large House in Multiple Occupation (HMO).

Decision

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

Introduction

2. 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. The Council and the Appellant have agreed that the appeal could be dealt with without the need for a formal site visit. In dealing with the appeal on this basis I am satisfied that no injustice will be caused.

3. Planning Practice guidance (Reference ID: 17c-006-20140306 Revision date: 06 03 2014) 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.*
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> *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'.*

4. The question in this case is whether or not it has been demonstrated that the appeal property has been in a Sui Generis use as a large House in Multiple Occupation (HMO) for a continuous period of 10 years dating back from the date of the LDC application, 10 June 2021. In effect this means that the large HMO use must be shown to have started on or prior to 10 June 2011 and for the required continuous 10-year period.

Background information

5. The appeal dwelling is a late Victorian, three storey, end of terraced property. It is located on the north-west side of Ampthill Road, at its junction with Amherst Road in this predominantly residential area to the south-west of Sefton Park. There is no dispute that it has seven bedrooms and two bathrooms, with communal areas which include a kitchen, a living room and a rear yard. On behalf of the appellant it is indicated that there is no relevant site planning history

6. There is no Article 4(1) Direction in place (Town and Country Planning (General Permitted Development) Order 1995 as amended) to remove permitted development rights, which allow the use of 60 Ampthill Road as a dwellinghouse by not more than six residents as a house in multiple occupation (HMO), Class C4.

The gist of the case for the Appellant

7. It is indicated that it is common ground between the parties that the appeal property has 7 bedrooms and it is contended on behalf of the appellant, that there is comprehensive evidence to confirm that the property has been occupied by up to seven unrelated people for a period in excess of 10 years. It is therefore argued that the use of the property as a large HMO is lawful.

8. References are made to the evidence which was submitted to the LPA in *'Bundles'* (8 No). The first (No 1) relates to five HMO Licenses issued for the property by LCC under the Housing Act 2004. It is stressed that each License confirms that the appeal property is suitable for occupation for not more than 7 people. The property has been licensed for this purpose from 21 July 2008 with a current license valid until 14 February 2024.

9. References are also made to LCC's HMO License Conditions which, amongst other things, confirm that properties must be inspected a minimum of once every six months and that the records for each inspection must also confirm checks are completed to ensure that the property is being not occupied other than in the manner and by the numbers stated in the licence. It is therefore the case that 60 Ampthill Road is a seven-bedroom HMO, licensed for this purpose between 21 July 2008 until 14 February 2024.

10. *'Bundle'* No 2 refers to Rent Books and Assured Shorthold Tenancy Agreements (ASTs). It is indicated that ASTs are not available for the property prior to 2012, due to the longevity of time which has passed the property became a HMO. However, Rent Account Books are provided which cover the periods 1 April 2007- 31 March 2010 (No 7*)* and from 21 April 2010- 31 March 2013 (No *2).*

11. It is indicated that the Rent Account Books demonstrate that 60 Ampthill Road was fully occupied by seven unrelated people throughout the period 1 April 2007 until 31 March 2013 except for various non-material breaks in occupation/expected fluctuations in between tenancies. These include various reductions to six and five unrelated occupants between August- September 2007 and November 2011. It is also indicated that the property was vacant between July and August 2012 for refurbishment. It is further contended that the Rent Account Books demonstrate

continuous HMO use of 60 Ampthill Road between 2007-2013, the only period of vacancy being for the 2012 refurbishment.

12. The Group ASTs (*Bundles 1 and 2*) indicate that the appeal property has been exclusively, fully occupied by seven unrelated people between 1 July 2012 and 30 July 2018 although during 2016-17, the property was occupied by an unrelated all-female group of five. It is indicated that this arose within the scope of normal market fluctuation and in the context of needing to accommodate a particular group within a same-sex household. The property remained a 7 bedroomed HMO and it is contended that no material change of use, in planning terms, occurred.

13. Following a change of ownership and management arrangements in 2019/19 the 7 rooms are stated to have been let separately and evidence of these lettings are set out in *Bundles 3, 5 and 6*. It is stressed that all 7 rooms were let from August and September 2018 and that Room 5 was on an initial short term tenancy of around one month, but all other rooms had initial rental terms ending in February the following year. Although it has not been possible to obtain any further ASTs from the previous owner it is stated that it is assumed that the initial rental terms ending in February 2019 were extended on a flexible basis.

14. There was a further change on ownership in 2021 and the most recent AST for seven unrelated people was submitted to the LPA covering the period 6 May 2021-30 September 2021. It is contended, therefore, that t 60 Ampthill Road has consistently been occupied as a HMO for seven unrelated people from 2012 until the present. It is further stressed that the Officer Assessment LPA makes no reference to evidence or documentation held by the Council which would contradict the appellant's version of events.

15. It is indicated that the LPA did not assist the appellant who was seeking information that the authority may hold about the planning status of the land but that two consultation responses were received, one of which confirmed that the property had been a 7-bed HMO for some time.

16. In conclusion reference is made to NPPG which is clear that when an LPA has no evidence itself, nor from any others, to contradict or otherwise make the applicant's version of event less than probable, there is no good reason to refuse the application. This interpretation of NPPG ought to be applied in this instance. Based on the various documents and evidence supplied it is contended that this demonstrates that on the balance of probability, the property has been in use between 2007 and 2021 as a Sui Generis HMO for more than 10 years.

The gist of the case for the Council

17. The LPA contends that for a LDC to be granted a 10 year continuous period of occupation of the appeal property by 7 persons prior to the specified date (10 June 2021) needs to be demonstrated. It is accepted that the applicant submitted a significant amount of documentation in support of the application and this is set out in the Council's statement.

18. These include references to the tenancy agreements for 7 persons from 1 July 2012 to 30 June 2015; from 1 July 15 to 30 June 2015 and from 1 July 2017 to 30 June 2018. In addition, for the period 1 July 2016 to 30 June 2017 the tenancy agreement(s) was for 5 persons. For 2018 the Council sets out the tenancy agreements for each of the 7 rooms. These starting dates range from 7 August 2018, for Room 3, through different dates in August for Rooms 1,2,3, 6 and 7 to 4 September 2018 for Room 5. There was no agreement related to Room 4 and there were two references to Room 3.

19. For 2018 to 2019, again the agreements were on a room basis with two of the room numbered No 3. The dates all started in August 2018, with Room 5 lasting just a month until 30 September 2018 and the rest through to February 2019. The Council then refers to the Rent Log between 2010 and 2013 showing varying occupancy during those years of 0 persons, 5 persons, 6 persons and 7 persons.

20. With refence to the issued HMO Licenses the Council lists them as follows: HMO License 21 July 08–1 year–7 people; HMO License 21 July 09–3 years–7 people; HMO License 21 July 12–3 years–7 people; HMO License 21 July 15–3 years–7 people and HMO License 14 Feb 19–5 years–7 people.

21. The Council stresses that a continuous 10 year period of occupancy by 7 persons up until 10 June 2021 must be demonstrated. Whilst accepting that there are HMO licences from 2008 for 7 persons, it is argued that this does not in itself demonstrate occupancy by 7 persons. Furthermore it is stressed that such continuous occupancy by a total of 7 persons is contradicted by the appellant's own evidence. It is contended, therefore, that whilst the HMO licences form part of the body of evidence, they cannot be relied upon in isolation and due regard must be had to all the evidence. The Council also refers to the submitted rent books and that the earlier version of this clearly show that the property was not occupied by 7 persons on a continual basis.

22. The LPA contends, however, that the key part of the case is that in 2016/17 only 5 persons occupied the premises which is demonstrated in the relevant submitted tenancy agreement. It is acknowledged that this was to accommodate a same sex household and the reasons behind the under occupancy are not questioned. However it is contended that this is not relevant for the purposes as to how the application, or this appeal, falls to be assessed.

23. It must be assessed on the basis of demonstrable 10 years continuous occupancy by 7 persons from 10 June 2011 to 10 June 2021. Given that the occupancy by 7 persons for the full 10 year period have not been demonstrated it is argued that a LDC should not be granted.

My assessment

24. A property is defined as a large Sui Generis HMO if rented/occupied by 5 or more people who form more than one household. Thus, although it is agreed that the house has 7 bedrooms, it is not necessarily the case that 7 people needed to occupy the property for the required period. When the house was occupied for the period 1 July 2016 to 30 June 2017 by just 5 persons (see the tenancy agreement) it would still have been defined as a large HMO.

25. I therefore disagree with the LPA's contention that *'for a LDC to be granted, a 10-year continuous period of occupation of the appeal property by 7 persons, prior to the specified date (10 June 2021), needs to be demonstrated'*. What needs to be demonstrated, as I indicate above, is that appeal property has been in a Sui Generis use as a large House in Multiple Occupation (HMO) for a continuous period of 10 years, dating back from the date of the LDC application, 10 June 2021. This means that the large Sui Generis HMO use must be shown to have started on or prior to 10 June 2011 and to have continued without a material interruption for the required 10-year period.

26. The Council's main case relates to the appellant's submission that, in 2016/17, only 5 persons occupied the premises to accommodate a same sex household or households. However, this would still have been defined as use as a large HMO irrespective of whether or not all 7 bedrooms were all used by 7 separate

individuals over the period. Planning permission would still have been required at that time for the Sui Generis use of the house and the reduction, from 7 people sharing the house to just 5 people, does not alter the fact that the house was still in use then as a large HMO. At that time a LCC HMO license was also in place covering up to 7 people. Again, it is clear that the 5 people sharing were sharing a large Sui Generis HMO.

27. Turning to the submitted evidence it is clear that the five HMO Licenses issued by LCC under the Housing Act 2004 confirmed that the house is suitable for occupation *'for not more than 7 people'*. These licenses cover the period from 21 July 2008 until the current one valid until 14 February 2024 and required regular inspections to ensure that the property was being occupied as stated. There is nothing to suggest that the license conditions were breached.

28. The comprehensive *'Bundles'* of evidence then include various Rent Account Books (RABs) and Assured Shorthold Tenancy Agreements (ASTs). Although ASTs are not available prior to 2012, RABs are provided which cover the periods 1 April 2007- 31 March 2010 (*Bundle 7)* and from 21 April 2010-31 March 2013 (*Bundle 2).*

29. I have noted that there were some minor breaks in the continuity of the Sui Generis use and that, as well as the reduction to 5 occupants referred to above, there was also a reduction to 6 in 2007. The property was also vacant between July and August 2012 when the property was refurbished. However, for the same reason as set out above, the reduction of occupants did not alter the use. With regard to the refurbishment period and any other short gaps between tenancies I consider, as a matter of fact and degree, that these are not material in relation to breaking the continuity of use.

30. The Group ASTs (*Bundles 1 and 2*) indicate that the house has been fully occupied by between 5 and 7 unrelated people between 1 July 2012 and 30 July 2018. *'Bundles'* 3, 5 and 6 indicate that *3, 5 and 6* following a change of ownership and management arrangements in 2019/19 the 7 rooms were let separately. It is indicated that all 7 rooms were let from August and September 2018; that Room 5 was on an initial short term tenancy of around one month, but all other rooms had initial rental terms ending in February the following year. Although no ASTs were obtained from the previous owner the assumption that the initial rental terms were extended on a flexible basis seems, on the balance of probability to be reasonable.

31. There was a further change on ownership in 2021 and the most recent AST for seven unrelated people covers the period from 6 May 2021 to 30 September 2021. From all of the evidence, therefore, I consider that on the balance of probability, the appeal property was in use continuously as a large HMO for the necessary 10 year period and that the during that period the Council could not have taken enforcement action. The facts that the LPA has not provided any evidence to counter the appellant's submissions and that there is no other evidence to contradict or otherwise make the applicant's version of events less than probable, reinforce my view that in this case a LDC should be issued.

Formal Decision

32. 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 10 June 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.

Anthony J Wharton Inspector

Date: 17 November 2022

Appeal Reference: APP/Z4310/X/22/3292897

First Schedule

The use as a Sui Generis, large house in Multiple Occupation (HMO).

Second Schedule

60 Ampthill Road , Liverpool L17 9QW

Notes:

This certificate is issued solely for the purpose of Section 192 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 to the plan(s) submitted with the LDC application. Plan references 21.028 001 Location Plan and 21.028 002 Existing Floor Plans.

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.