



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: 18 November 2022

Appeal Ref: APP/Z4310/X/22/3296202

177 Alderson Road, Liverpool L15 1HQ

- 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 Tom McConnon against the decision of Liverpool City Council.
- The application, Ref 21/LE/0123, dated 30 November 2020, was refused by notice dated 28 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 is sought is for an existing C4 House in Multiple Occupation for a shared house occupied by between 3 and 6 occupants.

Costs Application

An application for Costs has been made by Mr Tom McConnon against Liverpool City Council. This is the subject of a separate decision.

Decision

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

Matters of clarification

2. On behalf of the Appellant reference is made to the Council making '*significant errors in the interpretation and application of relevant legislation to justify submission of this appeal*'. In particular it is stated that the LPA failed in its duty by taking into account immaterial considerations; failed to seek better information from the Applicant; and failed to provide a full and proper reasoned explanation in reaching its decision.
3. Whilst noting these failures by the Council, they do not go to the heart of the matter before me. That is, whether or not the Council's decision to refuse the LDC application was sound and whether or not the existing use of the property, on 30 November 2020, was lawful for planning purposes on that date. In my view, the failures by the Council were principally administrative failures relating to the LDC application, rather than actions which directly affected the inevitable appeal process.
4. In reaching my conclusion, as to whether a LDC should be issued, I do not consider that the above actions by the Council are directly material to the outcome of the appeal before me. I have, however, considered the points raised in more detail when considering the costs application and whether or not these actions (as set out in both the Appellant's Appeal Statement and the submitted Legal Report) resulted in the unnecessary loss and expense in relation to the Appellant appealing the Council's decision.

5. Although I have noted the references and points raised relating to other appeal cases and case law, set out on behalf of the Appellant in the Appeal Statement Appendices and the Law Report, I have considered this Appeal on its merits. The main parties also agreed that a formal site visit was not necessary and in dealing with the appeal on this basis I am satisfied that no injustice has been caused.

Background information

The Appeal property

6. The appeal property is a brick-built, two-storey, terraced dwellinghouse, located on Alderson Road in this primarily residential area within the Picton Ward of Liverpool. The immediate area consists of similar traditional, brick-built, Victorian terraced houses with yards, which are generally set in parallel rows with rear alleyways or back lanes separating the rows. Like other properties in the area, the house is subject to an Article 4 direction (A4D) which restricts the change of use of dwellinghouses (Class C3) to small houses in multiple occupation (Class C4). This was issued on 17 June 2021.

Background to the LDC Application

7. The application, together with supporting evidence, although submitted on 30 November 2020, was not validated until January 2021. It was then refused in January 2022, some 12 months later. The application documents comprised a completed application form; tenancy agreements; a signed document from the previous owner/Landlord; Council Tax records dated 9 February 2021 and confirmation from the Appellant that there had been no subsequent change to the planning use of the property since it was purchased. These are all set out in detail in the appendices to the Appellant's appeal statement. There is no other planning history referred to in the submissions.

8. It is agreed between parties that the Article 4 Direction was not relevant to the determination of the application, since it was not issued until well after the LDC application was submitted. Nor is it relevant to this appeal. It is also agreed that it is necessary for the Appellant to demonstrate that the HMO Class C4 use was operational on the specified date. However, it is not agreed that it is necessary to demonstrate that the property was occupied on the specified date for the application to succeed. I agree with the Appellant's contention that occupancy is not the sole driver for whether a property has its changed use. Nonetheless, it is stressed that the house was occupied by the stated tenants on the specified date.

9. On behalf of the Appellant reference is made to the Officers Report (OR) that the evidence was provided in '*undated and unverified letters from the previous owner of the property*'. However, it is clear that the letter from the previous owner is signed and dated. It is also the case that the OR incorrectly records the dates set out in the tenancy agreements.

10. It is indicated that the LPA considered comments from neighbouring residents, and 3 ward councillors. The reference to an enforcement complaint relating to the dwelling being occupied by 8-9 individuals was not correct as this referred to another of the Appellant company's properties. It is also stressed that the LPA had not given the Appellant an opportunity to address this point and that this is contrary to advice in Planning Practice Guidance (PPG). The enforcement issue at the other property was resolved on the 28 March 2022 when the enforcement notice was quashed on legal grounds (APP/Z4310/C/21/3289450).

11. It is contended that the OR demonstrates that significant weight was attributed to immaterial comments made by objectors, without any evidence to support those assertions

and without giving the opportunity of redress or comment to the Applicant. Legal matters concerning the consideration of immaterial evidence is addressed in full in the submitted Legal Report.

12. It is stated that, although the refusal was issued on 28 January 2022, in an e-mail dated 21 September 2021 the Appellant's agent had been informed by the LPA Case Officer that 'My recommendation is likely to be for approval...I just have to get the sign off from Roger.' By this stage, the public consultation had long since closed, and all supporting evidence has been provided by the Appellant. The email chain between the parties also referred to the reasons for the delay including that the decision had to be signed off by the Council's Legal Team.

13. The application was refused for the following reason:

This certificate is issued solely for the purpose of section 191/192 of the Town and Country Planning Act, 1990 (as amended). It certifies that the use specified overleaf taking place on the land described was not lawful, on the specified date and, thus would have been liable to enforcement action under section 172 of the 1990 Act on that date. This certificate applies only to the extent of the use described overleaf and to the land specified and edged in red on the attached plans. Any use which is materially different from that described, or which relates to other land may render the owner or occupier liable to enforcement action. The effect of the certification is also qualified by the proviso in section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described 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 relevant to determining such lawfulness.

My assessment

14. 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's) reasons for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered. 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'.

15. The question in this case is whether or not it has been demonstrated that the appeal property had been in use as a Class C4 HMO prior to the issue of the A4D on 17 June 2021. Prior to that date it would have been permitted development to change the use of the house from a Class C3 dwellinghouse to a Class C4 HMO. Thus, whenever the change had occurred before that date, the LPA could not have taken enforcement action and the use would have been lawful.

16. I agree with the Appellant that the only matter the LPA should have considered is whether the existing class C4 HMO use of the property was lawful on the specified date, in accordance with the legislative test in Section 191 of the Town and Country Planning Act 1990 (as amended). Section (2)(a) of the Act states that operations are lawful at any time if no enforcement action may then be taken in respect of them because they did not involve development or require planning permission. I now turn, therefore, to the evidence submitted in support of the LDC application and whether or not it has been demonstrated, on the balance of probability, that the property was in use as a Class C4 HMO on 30 November 2020.

17. The Tenancy Agreements relate to 4 separate individuals who rented the property. These clearly show that the agreements were on monthly rolling contracts when the LDC application was submitted and are dated 23 May 2020 (x2); 20 March 2016 and 24 June 2020, well before the date of the A4D. The signed statement from the previous owner/Landlord corroborates the agreements and confirms that, at the time the property was sold to the Appellant (January 2021), the tenancy agreements provided with the application were still in place, and the property was still occupied by the same named tenants. There is also a Council Tax record dated 9 February 2021.

18. In the absence of any relevant contradictory evidence from either the Council or anyone else consulted on the application, I can only conclude that, on the balance of probability, the Appellant has demonstrated that the Class C4 HMO use was operational and that the property was occupied as such on 30 November 2020. Planning permission at that time was not required for such a change and the LPA could not, therefore, have taken enforcement action against the use being carried out.

19. It follows that I do not consider the LPA's decision to refuse the LDC application was sound and that a certificate should, therefore, be issued.

Formal Decision

20. The Appeal is allowed and a Lawful Development Certificate is attached below.

Anthony J Wharton

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 30 November 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: 18 November 2022
Appeal Reference: APP/Z4310/X/22/3296202

First Schedule

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

Second Schedule

177 Alderson Road, Liverpool L15 1HQ

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 to the Plans submitted with the LDC application on 30 November 2020. Plan references: Existing Plans - Drawing No PL-01, Scale 1:100 @ A3, dated 20/11/20 and Existing Site Plan - Drawing No SP-01, 1:1250 @A4 dated 20/11/20.

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.