
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: 22 November 2022

Appeal Ref: APP/Z4310/X/22/3298015

71 Woodcroft Road, Liverpool L15 2HG

- 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 Sam O'Flaherty against the decision of Liverpool City Council.
- The application, Ref 21/LE/3200, dated 26 October 2021, was refused by notice dated 11 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 an existing use as a C4 Use Class House in Multiple Occupation (HMO).

Costs Application. An application for Costs has been made by Mr Sam O'Flaherty 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. The Council acknowledges that an informative has been included within the LDC decision notice which purports to suggest that a certificate of lawfulness has been granted and that this is inconsistent with the other parts of the notice indicating a refusal. As outlined within the Council's response to the appellant's costs application, this was the result of a technical error and the Council does not consider this to have any bearing on their decision to refuse to issue a LDC.

3. The Council stresses that when considered in the round, with the wider evidential matrix and the Delegated Officer's report, the issues arising from the incorrect informative do not go to the weight of evidence on which their decision was made.

4. I agree that this was a technical or typographical error and that it does not directly affect whether or not the evidence submitted in the LDC application demonstrated that the property had been in use as a Class C4 HMO prior to the issue of an Article 4 Direction (A4D) on 17 June 2021. I have not, therefore, given any weight to this error in my assessment of this appeal. I have considered the appeal against the LDC refusal in accordance with the legislative framework which must be considered, and on the basis of the evidence presented by the Appellant.

5. Also, 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 Council recorded the wrong specified date; failed to properly consider the relevant test under S191 of the Act; took into account immaterial considerations; exercise available opportunity to seek better information from the Applicant/Appellant; failed to provide full and proper reasoned explanation in reaching their decision; and failed to properly give notice of the rights available to the recipient, stating in the decision notice that there is a 6-month period within which an appeal can be made, when there is in fact no such restriction for appealing a decision for a LDC application.

6. However, whilst noting these failures by the Council, I do not consider that these matters go to the heart of the appeal before me. That is, whether or not the Council's final decision to refuse the LDC application was sound and whether or not the existing use of the property, as applied for on 26 October 2021, was lawful for planning purposes on that date. In my view, the failures by the Council were serious administrative failures relating to the LDC application. However they are not actions which directly affected my consideration of the appeal and its eventual outcome.

7. In reaching my conclusion, as to whether a LDC should be issued, as indicated above, I do not consider that these failures 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 having had to appeal the Council's decision.

8. 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 will be caused.

Background information

Introduction

9. The appeal property is a two-storey, terraced dwellinghouse, located on the west side of Woodcroft 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 rear yards. These are set in parallel rows with back-to-back alleyways separating the rows. As referred to above, like other properties in the locality, 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.

History of the application/appeal

10. In October 2020, just prior to the Appellant's purchase of the property in November 2020, a planning application for a change of use from a Class C3 dwellinghouse to a Sui Generis large HMO was submitted to the LPA. The application indicated that the fall-back position was to use the property as a C4 use HMO within the then permitted development rights and that this demonstrated the intention of

the Appellant to operate the property as a Class C4 Use HMO in the event planning permission for a larger HMO was not granted. The application was refused on 29 January 2021. An appeal was made against the refusal and this was dismissed on 7 September 2021.

11. In the meantime a rolling contract tenancy agreement (naming 4 people) was commenced on 15 January 2021, the reason for this being the pending planning application/appeal. Following refusal of the application for a large HMO, a second tenancy agreement was signed on 28 April 2021 by three tenants, who rented the property from 1 July 2021 to the 30 June 2022.

12. The LDC application, the subject of this appeal, was submitted on 26 October 2021. In addition to the two tenancy agreements a Council Tax letter to the tenants, a location plan and a Statutory Declaration (SD) were submitted in support of the application. The SD confirmed that the property had been operated as a Class C4 HMO use since 15 January 2021.

13. The LPA informed the Appellant's agent that the LDC was to be refused based on the evidence supplied by neighbours. The Officer's Report refers to representations by neighbouring owner/occupiers, Ward Councillors, the MP for the area and the Stand up For Picton Campaign (SUFPC). The gist of the replies are set out in the Council's Appeal statement.

14. Reference is made to a family moving out in December 2020 just after the purchase by the Appellant. Another reply indicates that the property was then unoccupied for several months but that a group of 3 or 4 young men moved in together in mid to late June. It is indicated that neighbours were informed early in 2021 by the Cabinet Member for Housing that no family house would gain planning permission for conversion to a HMO.

15. There are also references to local people being intimidated by developers and those occupying some HMOs; an obvious concern by Ward Councillors about the number of HMOs; the pressures on local services and parking concerns; the fact that landlords do not live in the area and are therefore not concerned about the environmental, psychological and community impact of the HMOs on local residents.

My assessment

16. 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) reason(s) for refusal and then deciding whether the reason(s) is well founded. The planning merits of the case do not fall to be considered.

17. 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'.

18. 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.

19. Turning to the submissions it seems to be the case that the property was in use as a single family house and that a young couple with a child lived there until vacating the property in December 2020. Shortly after that date the evidence indicates that the Appellant (as sole Director of the company Yoloa Ltd) entered into a Tenancy Agreement (TA) with 4 different individuals on 15 January 2021.

20. This was 6 months prior to the A4D being issued. It has been stated that, due to the pending planning application which was needed for use as a large Sui Generis HMO, the agreement was on a 'rolling contract basis'. The agreement referred to the shared use of the kitchen, bathroom, toilet and sitting room.

21. As referred to above the planning application was refused and an Appeal was dismissed in September 2021. Before that, and also before 17 June 2021, there is Council Tax evidence (letter dated 19 April 2021) to indicate that the same 4 tenants were occupying the house on what must have been a continued shared basis. A second tenancy agreement (this time an Assured Tenancy Agreement) is submitted, whereby 3 persons signed an agreement to occupy the house from 1 July 2021 until 30 June 2022. This was clearly after the date of the A4D but indicates a similar pattern of usage.

22. All of the above information was submitted to the LPA on 26 October 2021 as part of the LDC application now the subject of this Appeal. In addition the Appellant submitted a Statutory Declaration (SD), dated 5 January 2022, confirming that the house had been in exclusive and continuous use as a Class C4 HMO since 15 January 2021 which is the date of the first TA.

23. Having considered the submitted evidence, I consider that, on the balance of probability, the appeal property was in a Class C4 HMO use when the LDC application was made and that the LPA could not have taken enforcement action against that use. It follows that I do not consider the LPA's reason(s) for refusal was sound and that the Appeal must succeed.

Other Matters

24. I have clearly noted and sympathise with the concerns of the LPA, neighbours, the Ward Councillors, the local MP and the SUFPC about the proliferation of HMOs in this part of Picton. However, all of the references to the main concerns raised are material planning considerations which, although might be relevant with regard to an application for a Sui Generis large HMO, cannot be taken into account in assessing whether or not this particular Class C4 use was lawful at the time of the

LDC application. As indicated above in a LDC application the planning merits cannot be considered.

25. Clearly the LPA was entitled to canvas evidence in relation to the LDC application and did so. However, none of that evidence was sufficiently precise and unambiguous to go to the heart of whether or not the house was in use as a Class HMO prior the issue of the A4D. In this case the LPA's evidence and that from others has not convincingly contradicted or otherwise made the Appellant's version of events less than probable.

Formal Decision

26. 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 26 October 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

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First Schedule

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

Second Schedule

71 Woodcroft Road, Liverpool L15 2HG

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 Plans submitted with the LDC application. Plan references: Location Plan, Scale 1:1250 dated 2/10/2020 and Existing Floor Plans, Scale 1:50 (at A1), Dwg No 0001.

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.