



Appeal Decision

Site visit made on 5 April 2023

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

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Appeal Ref: APP/Z4310/X/22/3301956

80 Blantyre Road, Liverpool L15 3HT

- 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 Mr Martin Nelson of Avondale Properties (Southport) Ltd against the decision of Liverpool City Council.
 - The application Ref 21LE/2715, dated 6 September 2021, was refused by notice dated 9 February 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 the use of the property as a Class C4 House in Multiple Occupation (HMO).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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.
3. The Council comments that further evidence has been submitted as part of the appeal that was not provided with the application. It is open to me to consider any such evidence because Section 195 of the 1990 Act refers to the 'refusal' being well-founded, which means the Local Planning Authority's decision, not the reasons for the decision. I have, therefore, taken account of the further evidence.
4. The planning merits of the use, such as matters relating to parking and/or noise and disturbance, are not relevant and they are not an issue for me to consider in the context of an appeal under s195. 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.

6. 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. 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 Dales' 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 18 April 2018 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(1) 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 a Class C4 HMO 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. The appeal property is a mid-terraced house with four bedrooms, located within a residential area. The appellant claims that the property has been used as an HMO since 2008.
10. A statement of facts (dated 15 March 2022) has been provided by the previous owner, stating that No 80 Blantyre Road was rented out, room-by-room, to up to five unrelated people between April 2008 and 2019. At that point the property was empty until its sale to the appellant in November 2020. It is further stated that the property was occupied by five tenants in April 2018 when the Article 4(1) Direction came into force.
11. A copy of an email from the Council's Revenues and Benefits department (dated 16 March 2022) confirms the property was rented by the owner as an HMO for periods between 2013 and 2019 and was also rented to individual tenants for a period of occupation.
12. Screenshots of archived 'Zoopla' adverts for the rent of rooms within the property have been provided, which indicate rental listings in December 2013, June 2018 and August 2018. A further listing, April 2019, shows the property for sale as a "four bedroom mid terrace student rental investment property".
13. Images from 'Google Maps' 2008 and 2012 have been submitted, which the appellant says show the installation of multiple TV aerials. The images are unclear, however.
14. An Assured Shorthold Tenancy Agreement (AST) for four tenants has been submitted, dated 27 May 2021. This related to the period 1 June 2021 to 30 June 2022.

15. The Council comments that the electoral register only shows one person registered at any time and that the property is not licensed as an HMO. Comments from neighbours suggest the property was empty between 2018 and 2021 and that it was not occupied by multiple people. Overall, the Council considers the appellant's evidence to be lacking in detail.

Analysis

16. The statement of facts is useful background information, but it cannot be treated as sworn evidence¹ as it has not been duly signed and witnessed. This limits the weight I can afford to the statement. There is some corroborating evidence from the Council's Revenue's Department, but this is ambiguous. The screenshots from Zoopla also suggest the premises was advertised for let to individual tenants but the dates are inconclusive as they relate to previous listings. Only one of these adverts appears to be before the date of the Article 4(1) Direction and there is insufficient evidence of occupation. The AST shows an intention to let the property from June 2021, which is after the relevant date, as is the Zoopla screenshot advertising the property for sale.
17. The Council's contrary evidence is not determinative either. I accept that tenants in short term accommodation would not necessarily register to vote. Also, it may not have been necessary to obtain a licence for use as an HMO. The neighbour comments quoted by the Council have not been provided and I am unable to take a view on their validity. I have taken account of the neighbour comments made in response to the appeal insofar as they are relevant.
18. Nonetheless, the onus of proof is on the appellant. While there is some evidence that the property was advertised to let on a room-by-room basis, and that the property was considered an HMO for Council Tax purposes, there is very little detail relating to occupancy. Such evidence would include sworn statements from owners and former occupiers including details of when the property was occupied and used as a small HMO. Supporting evidence would include utilities bills, detailed council tax records or other information relating to occupancy such as ASTs for the relevant timescales. Overall, the evidence is not sufficiently detailed. I am not satisfied that I can reach a justifiable conclusion that the property was in use as an HMO prior to the confirmation of the Article 4(1) Direction.
19. I find that 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

20. 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 use of the property as a Class C4 House in Multiple Occupation 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

¹ Under the Statutory Declarations Act 1835.