



Appeal Decision

Site visit made on 10 April 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2023

Appeal Ref: APP/Z4310/X/22/3306482

Flat Above 605 Smithdown Road, Wavertree, Liverpool L15 5AG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Tanzeel Rehman against the decision of Liverpool City Council.
 - The application ref 22LE/0238, dated 26 January 2022, was refused by notice dated 20 June 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 a small HMO.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) is well-founded.

Reasons

3. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use subject of the application is lawful for the purposes of section 191 of the 1990 Act. A use is lawful under the provisions of section 191(2)(a) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired.
4. A Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 applies to the area in which the appeal property is located. The Direction came into effect on the 17 June 2021 and removes the permitted development rights conferred by Schedule 2, Part 3, Class L(b), ie 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).
5. Given the above, the application for the LDC sought to confirm the appeal property was in use as a C4 Use Class prior to the date on which the Article 4 Direction came into effect, 17 June 2021 and is therefore lawful.
6. The appellant has submitted a statutory declaration stating they purchased the property in June 2021 and '...since I have purchased the said property it has only been used as a small HMO and has had no other use.' The Council states

that a Land Registry search confirms the appellant acquired the property on 23 June 2021, which is not disputed. The Council interprets the statutory declaration as stating, '*...that the premises has been in use since the date of acquisition (and not prior to the date of acquisition)*'.

7. However, I do not agree with this interpretation. It is clear on its face that the statutory declaration simply confirms that since the appellant purchased the appeal property it has only been used as a small HMO. It would be incorrect to conclude that this means the appeal property was not in use as a small HMO prior to the appellant purchasing it. The appellant confirms they managed the property from 10 June up to the point that the purchase was completed on the 23 June. This explains the assured shorthold tenancy agreement signed by four tenants for the term covering 14 June 2021 to 30 June 2022, which pre-dates the Article 4 Direction coming into effect. The appellant also confirms they took over the council tax for the property from 10 June 2021. This is not disputed by the Council.
8. Given the above, I find no conflict between what is stated in the statutory declaration and the assured shorthold tenancy agreement.
9. I find therefore, the evidence before me is sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the appeal property was in use as a small HMO prior to the Article 4 Direction coming into effect and was therefore lawful at the time the application was made.

Conclusion

10. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the small HMO was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Alexander Walker

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 26 January 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated on the balance of probabilities that the property was in use as a small HMO prior to the date the Article 4 Direction came into effect (17 June 2021) up until the date of the application and therefore did not require planning permission.

Signed

Alexander Walker

Inspector

Date: 25 April 2023

Reference: APP/Z4310/X/22/3306482

First Schedule

The use of the property as a small HMO

Second Schedule

Land at Flat Above 605 Smithdown Road, Wavertree, Liverpool L15 5AG

IMPORTANT NOTES – SEE OVER

NOTES

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

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 25 April 2023

by Alexander Walker MPlan MRTPI

Land at: Flat Above 605 Smithdown Road, Wavertree, Liverpool L15 5AG

Reference: APP/Z4310/X/22/3306482

Scale: Not to Scale

