
Appeal Decision

Site visit made on 10 April 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Appeal Ref: APP/Z4310/X/22/3310207

29 Jubilee Drive, Liverpool L7 8SJ

- 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 Meguerdich Pambakian against the decision of Liverpool City Council.
 - The application ref 21LE/1718, dated 7 June 2021, was refused by notice dated 22 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 house of multiple occupancy (HMO).
-

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. The application form for the LDC states the existing use as a 'house of multiple occupancy'. Although, it doesn't specify whether the house in multiple occupancy (HMO) falls within a Class C4 use, ie a HMO for up to 6 occupants, or a large HMO, ie 7 or more occupants, it is clear from the evidence submitted that the LDC is sought for a Class C4 use. Given the above, I have considered

the appeal on the basis that the application for the LDC sought to confirm the appeal property was in use as a Class C4 HMO prior to the date on which the Article 4 Direction came into effect, 17 June 2021, and is therefore lawful.

6. The appellant has provided a copy of an assured shorthold tenancy agreement signed by four tenants on 8 February 2021. The Council states there is no indication of when the agreement commenced. However, the first page of the agreement clearly states 'Term: 1 year starting 28 May 2021'. Therefore, in the absence of any evidence to the contrary, it is reasonable to conclude the appeal property was occupied by four tenants for a period of time that predates the Article 4 Direction coming in effect and includes the date on which the application for the LDC was made. Consequently, it has been sufficiently demonstrated that the appeal property was in use as a Class C4 HMO during this time.
7. 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 Class C4 HMO prior to the Article 4 Direction coming into effect and was therefore lawful at the time the application was made.
8. I have had regard to the arguments made regarding whether the appeal property has/has not been occupied for a continuous ten-year period. However, as I have found the appeal property was in lawful use as a Class C4 HMO at the time the application was made, I need not consider these arguments any further.

Conclusion

9. 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 Class C4 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 7 June 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in 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: 26 April 2023

Reference: APP/Z4310/X/22/3310207

First Schedule

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

Second Schedule

Land at 29 Jubilee Drive, Liverpool L7 8SJ

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

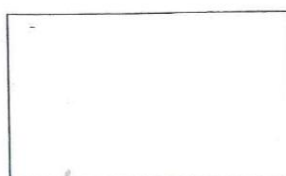
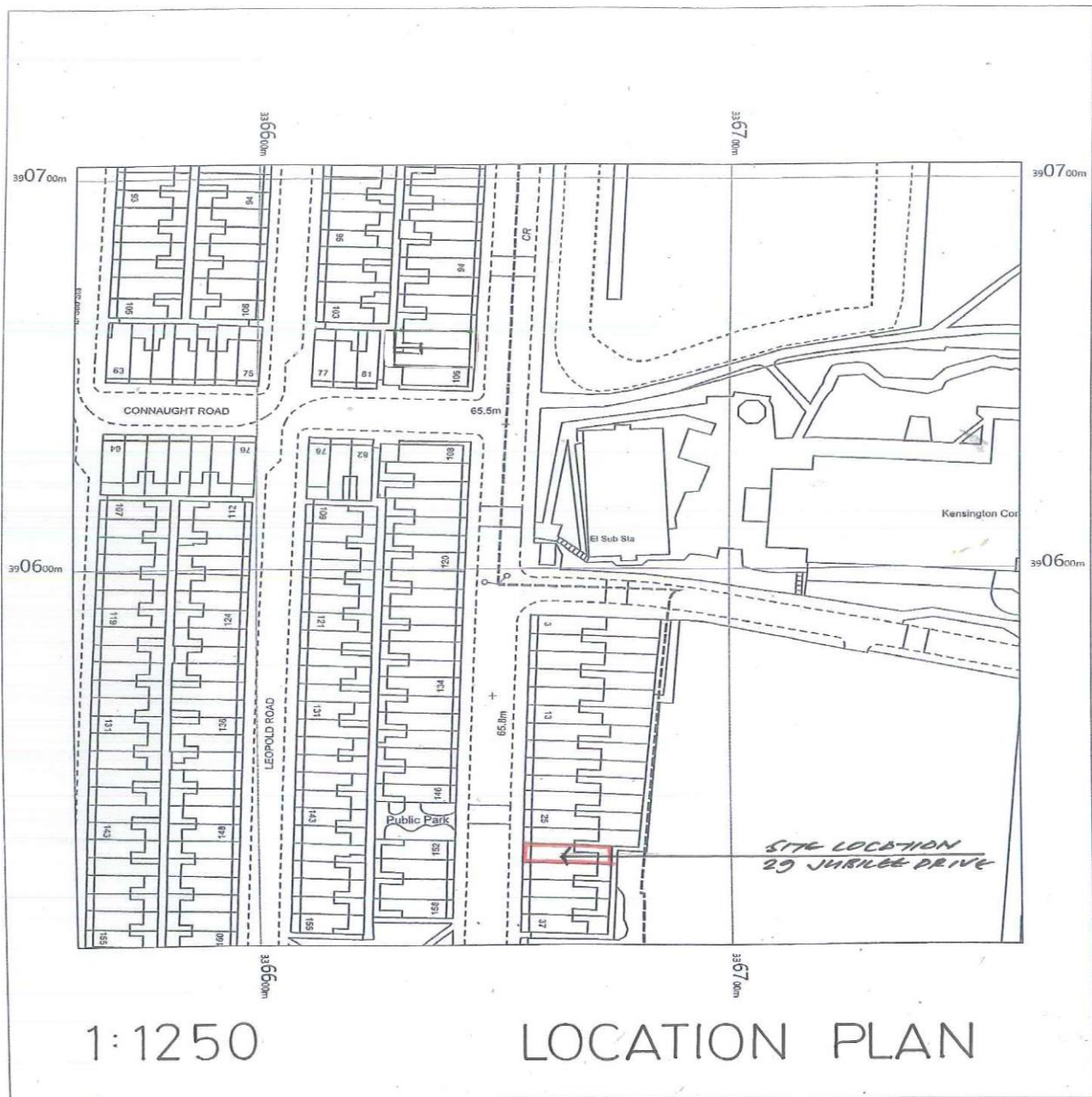
This is the plan referred to in the Lawful Development Certificate dated: 26 April 2023

by **Alexander Walker MPlan MRTPI**

Land at: 29 Jubilee Drive, Liverpool L7 8SJ

Reference: APP/Z4310/X/22/3310207

Scale: Not to Scale



OS MasterMap 1250/2500/10000 scale
Wednesday, January 20, 2021, ID: CM-00932394
www.centremapslive.co.uk

1:1250 scale print at A4, Centre: 336661 E, 390604 N

©Crown Copyright Ordnance Survey. Licence no. 100019980



FOR A BETTER POINT OF VIEW