



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/22/3312161

18 Rossett Avenue, Liverpool L17 2AP

- 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 Paul Carney on behalf of Wavertree Property Link against the decision of Liverpool City Council.
 - The application ref 22LE/2263, dated 8 August 2022, was refused by notice dated 30 September 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 C4 - a House in Multiple Occupation (Use Class C4).
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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.

Preliminary Matters

2. I have used the description of the development as set out in the Council's decision notice as this is more concise than that set out in the application form.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

4. 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.
5. 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).

6. The use for which a Certificate of Lawful Use or Development (LDC) is sought, as set out in the application form, is a Class C4 Use, ie a HMO for up to 6 occupants. However, the evidence submitted with the appeal, notably the Assured Shorthold Tenancy Agreement, the HMO licenses and the list of students that have occupied the appeal property since July 2011 confirm the property has been in use as an HMO for up to 7 occupants. There is no evidence that it has been used as a Class C4 HMO, other than what is said in the written confirmation of Tony Gore, dated 28 November 2022. Consequently, on the balance of probabilities, the appeal property was not in lawful use as a Class C4 use at the time the application for an LDC was made.
7. Notwithstanding the above, s191(4) of the Town and Country Planning Act 1990 states '*(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application*'. Therefore, I have the power to modify/substitute the description of the development for which an LDC is sought. On this basis, I shall now consider whether the appeal property has been in continuous use as an HMO for up to 7 occupants for a period of ten years prior to the date on which the application for the LDC was made. Given the evidence submitted with the application referred to an HMO for up to seven people, I do not consider there would be any injustice caused in taking this approach.
8. The evidence in support of the appellant's case includes Council Tax Bills covering the period of April 2017 to March 2021. These Bills include 'Students in Occupation' exemptions, although they give no indication as to how many student occupants there were during this period. However, there are copies of three HMO Licenses for the appeal property covering the period of 2009 to 2017. These licenses confirm that the property should not be occupied by more than seven people. Furthermore, there is a list of students that have occupied the appeal property from July 2011 up until June 2023. For each of the years during this period, this list indicates that there have been seven occupants for each tenancy term.
9. Despite the written confirmation of Tony Gore that the appeal property has been in use as a Class C4 HMO, which the appellant has since confirmed was an error, the other evidence submitted in favour of the appeal suggests that it has in fact been in use as an HMO for up to seven people since 2009. Individually, the sources of evidence only cover parts of a ten year period; only the list of past students covers a continuous ten year period. However, taken as a whole, the evidence before me is sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the property was in use as an HMO for up to seven people for a continuous period of ten years from 2009 to the time the application was made and was therefore lawful.

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 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 8 August 2022 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 an HMO for up to seven people for a continuous period of ten years prior to the date the application was made.

Signed

Alexander Walker

Inspector

Date: 26 April 2023

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First Schedule

The use of the property as an HMO for up to seven people

Second Schedule

Land at 18 Rossett Avenue, Liverpool L17 2AP

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: 18 Rossett Avenue, Liverpool L17 2AP

Reference: APP/Z4310/X/22/3312161

Scale: Not to Scale

