



Appeal Decision

Site visit made on 10 April 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2023

Appeal Ref: APP/Z4310/X/23/3315708

8 Fingland Road, Liverpool L15 0ES

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Jordan Silverstone against Liverpool City Council.
 - The application ref 22LE/2265 is dated 9 August 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 Use Class House in Multiple Occupation (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 Issues

2. The appeal is made against the Council's failure to give notice within the prescribed period of a decision on the application for a certificate of lawful use or development (LDC). The Council confirms that had they retained jurisdiction to determine the application, they would have refused it.
3. On this basis, the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) would have been well-founded had they retained jurisdiction to determine the application.

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. Given the above, the application for the LDC sought to confirm that 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
7. The relevant test of the evidence is 'on the balance of probability' (i.e. that it is more probable than not). 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.
8. A statutory declaration signed by Stephen James Campbell (previous owner), dated 26 October 2021 confirms that they owned the property since 4 November 2020 and it has been continuously used as an HMO since that date.
9. The appellant has also provided a copy of an Assured Shorthold Tenancy Agreement (AST) signed by four individual people covering the period of 4 November 2020 to 4 August 2021. Furthermore, the sales particulars from Zoopla, dated 12 July 2021 and the Abode sales particulars describe the property as having '4 rentable rooms'. Moreover, the Zoopla particulars confirm that it 'currently rents for £1340pcm, £16,000 per annum'. Whilst the sales particulars do not explicitly state that it was an HMO, reference to it having 4 rentable rooms that currently rent for £1340pcm clearly supports the appellant's argument that it was an HMO and corroborates the statutory declaration.
10. The Council confirms a letter from neighbouring residents has been received, which contradicts the statutory declaration. I have not been presented with a copy of this letter. The email from Elizabeth Bale (Council) to Darren Muir (appellant's agent) provides an extract of a letter; however, the Council's appeal statement provides a different extract, suggesting there may have in fact been two letters submitted.
11. The extract of the letter/s states that a young lady occupied the property for around 6 months up until September/October 2020, which would not conflict with the statutory declaration which states the property was in use as an HMO from 4 November 2020. However, the second extract states that it was occupied by a young lady from late 2020 until August 2021 and then lay empty until Autumn 2021 which clearly conflicts with the statutory declaration.
12. The Council states that officers from various Council departments have visited the property over the years, with no reference of it being used as an HMO prior to 17 June 2021. However, there is no indication that any consents or licences were required from the Council for the use of the property as a C4 HMO, prior to the Article 4 Direction coming into effect. I note the Council Tax department have no record of any occupiers for the property between 28 October 2020 and 7 November 2021. This conflicts with the neighbouring resident's comments that it was occupied by a young lady between late 2020 and August 2021. This may simply be due to the owner/occupiers not updating the Council records at the time.
13. None of the Council's own evidence explicitly confirms that the property was not in use as an HMO prior to 17 June 2021. Furthermore, the factual evidence in the form of the AST and the sales particulars raise some ambiguity and impreciseness over the comments from the neighbouring resident/s.

14. Overall, the evidence in support of the appeal is sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the appeal property was in use as a C4 Use Class HMO prior to 17 June 2021. As there is no evidence of a material change in the use of the property since that date or that its use has been abandoned, its use as a C4 Use Class HMO is therefore lawful.

Conclusion

15. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of a C4 Use Class House in Multiple Occupation (HMO) was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) 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 9 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 a C4 Use Class 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: 15 May 2023

Reference: APP/Z4310/X/23/3315708

First Schedule

C4 Use Class HMO

Second Schedule

Land at 8 Fingland Road, LIVERPOOL, L15 0ES

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: 15 May 2023

by **Alexander Walker MPlan MRTPI**

Land at: 8 Fingland Road, LIVERPOOL, L15 0ES

Reference: APP/Z4310/X/23/3315708

Scale: Not to Scale

