
Appeal Decision

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 July 2023

Appeal Ref: APP/Z4310/X/23/3317515
103 Claremont Road, Liverpool L15 3HJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 Miss Hinakshi Patel against the decision of Liverpool City Council.
 - The application Ref 21LE/0811, dated 23 March 2021, was refused by notice dated 4 October 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 student accommodation HMO (Use Class C4).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Based on the evidence before me and the fact that this appeal is a legal determination based on the interpretation of permitted development rights pursuant to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) I have determined that a site visit is not necessary.
3. The basis upon which the LDC was made is that the use began within the last 10 years, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last 10 years. Most s191 appeals relate to whether the existing use is immune from enforcement action due to the passage of time, but in this case the determination falls on whether the existing use amounts to development.
4. An Article 4 Direction restricting the change of use from a family dwelling (C3) to a small HMO (C4) was introduced on 17 June 2021. The appellant contends that this is the crux of the appeal because at the time the application was made, permission was not required to use the property as a small HMO and the Article 4 Direction is not a retrospective constraint. However, an application for a LDC under s191(1)(a) of the 1990 Act relates to an existing use and is seeking to ascertain whether the use of the building is lawful. The onus is on the appellant to make out their case to the standard of the balance of probabilities. Issues of planning merit are not relevant because there is no deemed planning application.

5. Under s191(4) and s192(2) the relevant date for ascertaining whether the existing development is lawful is the date of the LDC application. Given the fact that the application was made for an existing use rather than a proposed use, the evidence submitted must be sufficient to satisfy the LPA that on the balance of probabilities, the C4 use was operational, and that the property was occupied as such, on 23 March 2021.

Application for costs

6. An application for costs were made by Miss Hinakshi Patel against Liverpool City Council. This is the subject of a separate Decision.

Main Issue

7. The main issue is whether the Council's refusal to grant a certificate of lawful use was well-founded. That turns on whether the appellant has proved on the balance of probability that the use of the property changed to a C4 house in multiple occupation began within the last 10 years, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last 10 years.

Reasons

8. The appeal property is a mid-terrace two storey house comprising a hallway, lounge, kitchen/dining room and shed at ground floor with a landing, three bedrooms and a bathroom at first floor.
9. Schedule 2, Part 3, Class L of the GDPO sets out a permitted change from a use falling within C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (HMOs) of that Schedule. HMOs falling within Use Class C4 are for between 3 and 6 unrelated persons sharing a dwellinghouse. The appellant has stated that the previous owner had a landlord licence and standards in the house were kept high, which she will also maintain. In addition, it is contended that the house has been continuously rented since 2015 and that there is clear evidence that it has been rented (mainly to students) as shown in various tenancy agreements. In support of this various evidence has been submitted.
10. A copy of a Liverpool City Council issued landlord licence which appears to cover the period 2 September 2016 to 31 March 2020 covers only part of the material period and does not state that the property was licenced as an HMO, only that it met the Council's standards for the property to be rented out. As such, it does not confirm that the property has been occupied as a small HMO for the duration of the licence.
11. Copies of three tenancy agreements have been provided, each appearing to be a single tenancy agreement for 12-month periods for:
 - August 2015 to August 2016;
 - August 2017 to August 2018; and
 - July 2018 to July 2019.
12. The agreements are each for individual tenants and there is mention of shared occupants and shared parts of the property, but no further details of who those shared occupants are, and even if there were any, have been submitted. As

such these provide insufficient proof that of C4 use prior to the date the application was submitted.

13. In addition, there are tenancy agreements for three tenants concerning the 10 month periods from 26 August 2021 to 30 June 2022 and from 1 July 2022 and 30 June 2023. These do appear to be un-related persons sharing a dwellinghouse, but the periods in question are post-submission of the LDC application. As such they are not evidence of the existing use of the property as a C4 HMO prior to the application being submitted.
14. In addition, there is a representation that appears to indicate that the property was previously rented by three girls for about 2 academic years. No further details of the tenants or the dates to which their tenancy relate have been provided. Consequently, this is not evidence of a C4 small HMO use for the required period.
15. From the statement provided by the appellant it appears that the previous owner of the property purchased it and provided the property for their student son to occupy and rent out a room whilst at college. The fact that there are only single tenancy agreements for three consecutive years appears to corroborate this position and as such challenges the evidence that the property was used as a small C4 HMO.
16. Irrespective of the quality of the evidence submitted, the most important consideration here is that it does not prove that the property actually changed to C4 use in the 10 year period prior to the submission of the LDC as a result of not requiring planning permission. Therefore, the appellant has failed to prove on the balance of probability that the use of the property changed to a C4 house in multiple occupation on or before 23 March 2021, and there has not been a change of use requiring planning permission in the last 10 years.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use in respect of the use as student accommodation HMO (Use Class C4) was well-founded. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A A Phillips

INSPECTOR