



Appeal Decision

Site visit made on 11 September 2023

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2023

Appeal Ref: APP/Z4310/X/23/3320355

30 Bentley Road, Liverpool L8 0SZ

- 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 Mohamed Qadir on behalf of Accomod8 Limited against the decision of Liverpool City Council.
 - The application ref 22LE/3194, dated 21 November 2022, was refused by notice dated 21 February 2023.
 - The application was made under sections 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a 10 bedroom HMO and the replacement of timber single glazed windows to UPC framed double glazed.
-

Decision

1. The appeal is allowed insofar as it relates to the replacement of timber single glazed windows to UPC framed double glazed and attached to this decision is a certificate of lawful use or development describing the existing development which is found to be lawful.
2. The appeal is dismissed insofar as it relates to the use of the appeal property as a 10 bedroom HMO.

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 was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) of the Town and Country Planning Act 1990 (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. 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.
5. The application sought a Certificate of Lawful Use or Development (LDC) for the use of the appeal property as a 10 bedroom House in Multiple Occupation (HMO) and the replacement of timber single glazed windows to UPC framed double glazed. I note the Council make no assessment within their Delegated

Report as to whether the replacement windows are lawful. However, as it formed part of the application, I have considered it accordingly.

10 Bedroom HMO

6. For the change of use to be authorised through the passage of time, the appellant must show that the use has continued for at least 10 years prior to the date of the application, as set out in s.171B(3) of the Act. Therefore, if the property was continually in that use for a ten-year period prior to 21 November 2022, it would subsequently be lawful.
7. The appellant states that the appeal property has been in occupation as an 8-10 bedroom HMO since their father purchase it in 2006. In support of this, the appellant submits a valuation report, which states that the customer (appellant's father) intended to convert the property for use as an HMO and that it could provide 8-10 letting rooms. In addition, a planning application was submitted to the Council in 2007 for the conversion of the building to a large HMO. However, the appellant confirms that this was subsequently withdrawn. The appellant claims that the valuation report and the withdrawn planning application show that there was always an intention to use the building as a large HMO. However, this does not indicate that the building was actually used as a large HMO at that time. On the contrary, although the appellant states the 2007 planning application was withdrawn due to a lack of sufficient information submitted with it, it could equally be argued that the failure to submit the necessary information or resubmit the application indicates a lack of intention to use the building as a large HMO.
8. Notwithstanding the above, a copy of an Inspection Report dated 17 September 2007 states that the property was an 8 bed HMO at that time.
9. An email from the Council's Environmental Health Enforcement Officer, dated 5 July 2010 refers to an HMO licence. However, there is no reference to whether the property was a small or large HMO. Moreover, the email confirms that the licence for the property had expired. There is no explanation provided as to why the licence was allowed to expire. This suggests that the property may well have ceased being used as an HMO at that time and therefore an HMO licence was no longer required.
10. Email correspondence between Nadeem Qadir and Richard Gaskell of Priority Properties North West Limited (PPNWL) dated August 2012 refers to the property as having 8 bedrooms, suggesting that it was in use as an 8 bed HMO at that time.
11. The Transfer of Responsibility for Property document dated 7 September 2012 confirms the transfer of the responsibility of the property from United Property Management Limited to PPNWL/Serco. I acknowledge these companies specialise in renting out properties. However, this document makes no reference to the use of the property, let alone its use as a large HMO.
12. There is also an Inspection Report, dated 18 February 2014, carried out by Serco, which refers to the property as having up to 8 bedrooms. The appellant contends that this inspection was in relation to HMO standards requirements. However, the report makes no reference to its purpose other than it confirms the property was not compliant with the Housing Act 2004 and Regulatory

Reform (Fire Safety) Order 2005. Moreover, the report makes no reference to the use of the property.

13. A Fire Risk Assessment, dated 20 February 2014, carried out by Durovernum Fire Services Ltd states the use of the premises as an HMO and that it has 8 bedrooms. However, it does not specify that all 8 bedrooms were occupied at the time.
14. The appellant has also provided copies of HMO licences for the property that confirm it is suitable for occupation by not more than 8 people. These are dated 14 May 2015, 8 April 2016 and 19 March 2018. The 2015 and 2016 licences were in effect for a 12 month period each and the 2018 licence was for a period of 5 years. However, there is no indication of whether there was a licence for the 12 month period between 2017 and 2018 or for the period of time between 21 November 2012 and the issuing of the 2015 licence.
15. Overall, there is evidence the appeal property has, more likely than not, been in use as an 8 bedroom large HMO during some periods of time since 2006; notably in September 2007, 2012, 2015, 2016 and from 2018 onwards. However, there are significant gaps, spanning a number of years, for which there is no evidence supporting the use of the property as a large HMO. Given that copies of HMO licences have been provided for some years, it is unusual they have not been provided for other years. Moreover, due to the nature of the occupation of the property, I acknowledge the letting company may not have single tenancy agreements. However, one would expect there to be some record of tenancy occupation of the property over the requisite period of time.
16. In addition, there is very limited evidence to indicate the property has been occupied as a 10 bed HMO. The HMO licences all refer to it as an 8 person HMO and the inspection reports make no reference to any more than 8 bedrooms.
17. During the significant periods of time where no evidence has been provided demonstrating the use of the property as a large HMO, based on the impracticalities of altering the rooms accordingly, it would be unlikely that the property would have reverted back into a single-family dwelling. However, it is entirely plausible that the during these periods the property may have been in a different use, for example a small HMO. Such a use would have resulted in a material change of use, thus starting a new planning chapter for the property.
18. I acknowledge the statutory declaration from Mohamed Nadeem Qadir that states the property has been in use as a large 8-10 bedroom HMO. Notwithstanding an inconsistency with the appellant's own statement in that the declaration states the property has been in such use since 2007, whereas the appeal statement states it started in 2006 when the property was purchased, for the reasons I have found above the evidence in support of this is not precise and unambiguous.
19. I find therefore, on the balance of probabilities, the material change of use of the appeal property to a 10 bedroom HMO has not occurred continuously for a ten-year period prior to the date of the application.

Replacement Windows

20. For the replacement windows to be authorised through the passage of time, the appellant must show that they were substantially completed at least 4

years prior to the date of the application, as set out in s.171B(3) of the TCPA. Therefore, if the replacement windows were substantially completed 4 years prior to 21 November 2022, they would subsequently be lawful.

21. The Google Streetview image of the property dated October 2009 shows timber sash windows installed in the property. The October 2012 image shows uPVC windows installed. The Council do not dispute these images.
22. I find therefore, the evidence before me is sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the uPVC windows were installed at least four years prior to the date of the application and therefore were lawful at the time the application was made.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development, in respect of the use of the appeal property as a 10 bedroom HMO, was well-founded and that the appeal should fail.
24. In respect of the replacement uPVC windows, the Council's refusal to grant a certificate of lawful use or development is not well-founded and that the appeal should succeed insofar as it pertains to the windows. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

A 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 21 November 2022 the operations 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, were 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 replacement windows were installed more than four years prior to the date of the LDC application.

Signed

A Walker

Inspector

Date: **27 September 2023**

Reference: APP/Z4310/X/23/3320355

First Schedule

The replacement of timber single glazed windows to UPC framed double glazed.

Second Schedule

Land at 30 Bentley Road, Liverpool L8 0SZ

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: **27 September 2023**

by A Walker MPlan MRTPI

Land at: 30 Bentley Road, Liverpool L8 0SZ

Reference: APP/Z4310/X/23/3320355

Scale: Not to Scale

