



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/23/3324150

2 Halkyn Avenue, Liverpool L17 2AH

- 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 Philip Spence against the decision of Liverpool City Council.
 - The application ref 23LE/1055, dated 23 April 2023, was refused by notice dated 13 June 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 the use of property as 7 Bed HMO within class Sui Generis. Building Works carried out under Building Control validation ref 18/2399FP - Kitchen extension at rear (convert upstairs kitchen to shower room and separate toilet, extend downstairs kitchen and make open plan).
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Decision

1. The appeal is dismissed.

Main Issue

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

Reasons

3. 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 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 his evidence alone is sufficiently precise and unambiguous.
4. The application sought a Certificate of Lawful Use or Development (LDC) for the use of the appeal property as a 7 bed House in Multiple Occupation (HMO) and the erection of a single-storey extension. I note the Council make no assessment of whether the extension is lawful within their Delegated Report or appeal statement. However, as it formed part of the application, I have considered it accordingly.

7 Bed HMO

5. 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 TCPA. Therefore, if the property was continually in that use for a ten-year period prior to 23 April 2023, it would subsequently be lawful.

6. The appellant has provided copies of Assured Short Term Tenancy Agreements for the years 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2017-2018. All of these agreements have seven named tenants. However, only two of the agreements are signed – 2011-2012 and 2013-2014. This raises ambiguity over whether the other agreements were executed and the property occupied by the named tenants.
7. In addition, there is a significant break of 12 months between 2016 and 2017, with no agreements, signed or otherwise, for this period. Moreover, even if there was an agreement for 2016-2017 and all of the agreements were signed, they would only cover a period of 8 years. There are no copies before me of agreements dated between 2018 and 23 April 2023.
8. There are also 3 copies of rental statements for the appeal property. Notwithstanding these are only dated 4 September 2019, 11 May 2020 and 15 December 2020, and therefore cover a very limited period of time, they provide no indication of how many tenants occupy the property.
9. In addition, whilst the three Council Tax Bills covering the period of 2021 to 2024 state that the property is student exempt, it provides no indication of how many occupy the property.
10. I also note the rental particulars of the property, which states that the property has 7 rooms available. However, these particulars are not dated and provide no indication as to how many people actually occupy the property.
11. I acknowledge the statutory declaration from Melanie Spence that states the HMO use has been in continuous use. However, for the reasons I have found above, the evidence in support of this is ambiguous and imprecise.
12. I find therefore that it fails to demonstrate that, on the balance of probabilities, the material change of use of the appeal property to a 7 bed HMO has occurred continuously for a ten-year period prior to the date of the application.

Extension

13. For the change of extension to be authorised through the passage of time, the appellant must show that it was 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 extension was substantially completed 4 years prior to 23 April 2023, it would subsequently be lawful.
14. The appellant has provided a copy of a Completion Certificate from the Council for the extension, dated 17 November 2022. This certificate confirms that that 'A Building Regulation application was deposited under Section 1 (3) of the Building Act 1984 on 10 December 2018' and that the date of completion inspection was carried out on 17 November 2022. Whilst the Building Regulation application was in excess of 4 years prior to the date of the LDC application, the important date is when the extension was substantially completed. The date of the completion inspection was well within the four-year period prior to 23 April 2023.

15. The copy of the Acknowledge of Party Structure Notice, dated 28 December 2018, is also in excess of the four-year period prior to 23 April 2023. It seems the construction of it was not commenced until after 12 December 2018 (the date on which the Acknowledgement of Party Structure Notice was issued to the owner/s 4 Halkyn Avenue). However, this only indicates that the erection of the extension likely commenced 4 years prior to the LDC application. It does not indicate when the extension was substantially completed.
16. In the LDC application form, the appellant states the extension was nearly completed by April 2019. However, there is no evidence to explain what 'nearly completed' amounted to or why there was a gap of over three years between the extension being 'nearly completed' and the completion inspection being carried out in November 2022. This raises significant ambiguity as to when the extension was substantially completed.
17. Overall, the evidence in support of the extension is not precise and unambiguous. I find therefore that it fails to demonstrate that, on the balance of probabilities, the extension was substantially completed four years prior to the date of the application.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A Walker

INSPECTOR