



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/22/3311974

3 Mostyn Hall, Gainsborough Road, Liverpool L15 3HX

- 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 Richard Edy on behalf of ESP Property Ltd against the decision of Liverpool City Council.
- The application ref 21LE/2484, dated 30 June 2021, was refused by notice dated 1 June 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 an 8 bed HMO.

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. The appellant has submitted a number of documents with the appeal submission, including correspondence from the Council's Licensing Support Officer and a statement from a director of the company, Moss Development Ltd, that previously owned the appeal property. The Council objects to the submission of these documents on the basis that they were not included in the application submission for their consideration and therefore to accept their submission as part of the appeal would conflict with the *Wheatcroft*¹ principles.
3. The Procedural Guide: Planning Appeals – England states that if an applicant thinks that amending their application will overcome the LPA's reasons for refusal, they should normally make a new planning application and the appeal process should not be used to evolve a scheme. However, in this instance, the submission of these documents does not change the development in anyway, it simply supports the appellant's case that the use has taken place for a period of ten years. Furthermore, as the documents were submitted at the time the appeal was lodged, interested parties, including the Council have had the opportunity to comment on them.
4. Having regard to the principles established in the *Wheatcroft* judgment, I find that interested parties would not be prejudiced by the submission of these documents. Accordingly, I have determined the appeal having regard to these documents.

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982]

Main Issue

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

Reasons

6. 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.
7. The application sought a Certificate of Lawful Use or Development (LDC) for the use of the appeal property as an 8 bedroom House in Multiple Occupation (HMO). For the use to be lawful 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 appeal property was continually in that use for a ten-year period prior to 30 June 2021, it would subsequently be lawful.
8. The appellant has provided copies of HMO licences for 8 persons that cover the period of time between 2015-2018, 2018-2023 and 2021-2023. It is not clear why there is an overlap between the 2018-2023 and 2021-2023 licences, although I note that the 2021 licence roughly coincides with when the appellant became the owner of the property.
9. There is also a copy of an HMO licence covering the period of 2009 and 2012, which the appellant states was taped to a wall in the property. The Council disputes the authenticity of this licence. They contend that the Council's Private Sector Housing department confirm that the first HMO licence issued for the property was in 2012. However, that is not strictly the case. The Private Sector Housing department merely confirmed with the appellant that the dates of the previous licences on file covered 2012-2018. It does not confirm that there were not any licences issued prior to 2012.
10. The appellant argues that the absence of a copy of the 2009 licence in the Council's records must be due to an error with the Council's filing system. Whilst it is not common for records to be misfiled or erroneously deleted, it is not unheard of.
11. The Council's Private Sector Housing department's email to the appellant confirming licences were issued in 2012 and 2015 was in response to the appellant's request for copies of HMO licences for the property dating back 10 years (from the date of their email, 27 October 2021). I note that in addition to not including the 2009 licence, the response did not include the HMO licence covering the period of 2018-2023, the authenticity of which is not disputed.
12. In addition, the written statement from Julien Moss (director of J. Moss Developments Ltd.) confirms that the building was occupied as a large HMO after it was built in 1994 and HMO licences were obtained in 2009, 2012 and

2015 and was occupied as such up until they sold it in 2021. The Liverpool Record Office confirms that the property has been home to multiple occupants from at least 2011, albeit it doesn't confirm how many occupants.

13. Based on the evidence before me, it seems entirely plausible that the 2009 licence for 8 persons is authentic, despite the Council not being able to find a record of it. As such, the appellant has provided copies of HMO licences covering a continuous period of time from 2009-2021, which exceeds the requisite 10-year period. Whilst the HMO licences in themselves do not categorically prove that the building was indeed occupied by 8 persons continuously for a period of 10 years, there is no evidence before me that contradicts that it was. It would be unlikely that HMO licences would be sought if the building was not being used as such.
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 an 8 bed HMO for a period of ten years or more prior to the date the LDC application was made and is therefore lawful.

Conclusion

15. 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 in respect of the 8 bed HMO is 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.

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 29 June 2021 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 eight people for a continuous period of ten years prior to the date the application was made.

Signed

A Walker

Inspector

Date: **27 September 2023**

Reference: APP/Z4310/X/22/3311974

First Schedule

An 8 bed HMO

Second Schedule

Land at 3 Mostyn Hall, Gainsborough Road, Liverpool, L15 3HX

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: 3 Mostyn Hall, Gainsborough Road, Liverpool, L15 3HX

Reference: APP/Z4310/X/22/3311974

Scale: Not to Scale

