



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/23/3319947

12 Amthill Road, Aigburth, Liverpool, Merseyside L17 9QW

- 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 Paul Kay against the decision of Liverpool City Council.
 - The application ref 22LE/2862, dated 18 January 2023, was refused by notice dated 24 February 2023.
 - 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 7 bedroom house in multiple occupation.
-

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 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 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 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 18 January 2023, it would subsequently be lawful.
5. The appellant has provided a number of copies of HMO licences for the appeal property. The earliest licence submitted is for seven people covering the period of 25 February 2009 – 25 February 2010, which is clearly more than 10 years prior to the submission of the LDC application. However, there is a 4-year gap

between this licence and the next licence, which covers the period of 25 February 2014 and 25 February 2015. This is a significant gap with no explanation for it. During this four-year gap, it is entirely plausible that the use of the property as a 7 bedroom HMO ceased.

6. Following the 2014-15 licence, the subsequent licences cover the continuous period from 2015 up until the date of the LDC application. Therefore, although the HMO licences suggest a continuous use of the property as a 7 person HMO between February 2014 and the date of the LDC application, this only covers a period of 9 years, not the requisite period of 10 years. There is no evidence to explain the gap between 18 January 2013 and 25 February 2014.
7. The appellant has also provided copies of Assured Shorthold Tenancy Agreements (ASTAs), each with 7 signatories. However, the ASTAs only cover the period of time between 1 June 2014 up until, and beyond, the date of the LDC application. As with the HMO licences, this only demonstrates a period of approximately 9 years prior to the date of the LDC application, not the requisite 10 years.
8. The Class Accreditation Certificate states the 'Date of accreditation' as being December 2014, which, again, is less than 10 years prior to the date of the LDC application. Moreover, it only states that the appellant meets the standards under the CLASS Landlord Accreditation Scheme. Therefore, whilst it demonstrates they are a landlord of 12 Amphill Road, it makes no reference to the property being a 7 person HMO.
9. The copy of a Council Tax Bill, dated 15 January 2015, makes reference to a 'Tenancy agreement for previous tenants for period 25/3/13 to 30/6/14'. The Bill confirms that, at the time, the property was occupied by full time students. Whilst this Bill covers part of the period of time the HMO licences and ASTAs submitted do not cover, in the absence of a copy of the ASTA referred to, it is not possible to ascertain how many tenants occupied the property at the time. It is entirely plausible that at the time there could have been fewer than 7 tenants.
10. The water bill for the property, dated 8 February 2014 states that Direct Debit payments had been received dating back as far as 28 February 2013. However, notwithstanding that this still does not date back to the requisite date of 18 January 2013, the water bill makes no reference to how the property has been occupied, let alone that it was occupied as a 7 person HMO.
11. Overall, on the balance of probabilities, the evidence submitted demonstrates that the property has been occupied as a 7 person HMO since 2014. However, there is a distinct absence of sufficient evidence to demonstrate that it was occupied as such prior to this.
12. Therefore, I find the evidence in support of the 7 bedroom HMO is not precise and unambiguous. 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.
13. I acknowledge the appellant's attempts to correspond with the Council in order to achieve a satisfactory outcome during the course of the LDC application. However, this has had no bearing on the merits of the appeal before.

Conclusion

14. 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