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# Appeal Decision

Site visit made on 2 January 2024

**by A Walker MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 1 February 2024**

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**Appeal Ref: APP/Z4310/X/23/3331151**

**102 Edinburgh Road, Liverpool L7 8RF**

- 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 Georgios Geogiou on behalf of Lucky Three Ltd. against the decision of Liverpool City Council.
  - The application ref 23LE/1273, dated 16 May 2023, was refused by notice dated 11 July 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 C4 House in Multiple Occupation.
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## 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.

## 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) and (b) 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; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. 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. A Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 applies to the area in which the appeal property is located. The Direction was confirmed on 17 June 2021 and removes the permitted development rights conferred by Schedule 2, Part 3, Class L(b), ie the change of use of a building from a use falling within Class C3(dwellinghouses) to a use falling within Class C4(houses in multiple occupation).

5. The application for the LDC sought to confirm the appeal property was in use as a Class C4 Use prior to the date on which the Article 4 Direction was confirmed, 17 June 2021, and is therefore lawful.
6. The appellant has provided copies of Assured Shorthold Tenancy Agreements (AST) signed by four individual people covering the period of 1 June 2021 to 30 June 2022. The ASTs are not categorical proof that these individuals actually occupied the property. However, they need not be; the burden of proof is on the balance of probabilities, not beyond all reasonable doubt. I note the tenants on the 2021-2022 AST are the same as those named on the AST covering the period of 1 July 2022 to 30 June 2023, suggesting they continued their tenancy for a second year.
7. The ASTs are clearly signed by the individual tenants and the rental term is prior to 17 June 2021. In the absence of any evidence to the contrary, it is reasonable to conclude these four individuals proceeded to occupy the appeal building in accordance with the terms of the ASTs.
8. The appellant has also provided an AST covering the period up until the date of the LDC application, which similarly suggests the building has continued to be occupied as a C4 HMO during this period by the same four tenants. There is no evidence to the contrary.
9. I acknowledge the submission of Council Tax bills and receipts for rental payments could have provided a stronger case for the appellant, if they did indeed support their case. Nevertheless, the question is whether it is more probable than not the building was occupied as a C4 HMO at the time the Article 4 Direction was confirmed. Although there is limited evidence before me, and as a result it is a fine balance, the ASTs indicate that it is more probable than not.
10. I find therefore, the evidence is sufficiently unambiguous and precise to demonstrate that, on the balance of probabilities, the appeal property was in use as a Class C4 HMO when the Article 4 Direction came into effect and was at the time the LDC application was made.

### **Conclusion**

11. 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 Class C4 HMO was 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

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# 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

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**IT IS HEREBY CERTIFIED** that on 16 May 2023 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 a C4 Use Class House in Multiple Occupation on the date the Article 4 Direction was confirmed (17 June 2021) and up until the date of the application and therefore did not require planning permission.

Signed

*A Walker*

Inspector

Date: 1 February 2024

Reference: APP/Z4310/X/23/3331151

***First Schedule***

C4 Use Class House in Multiple Occupation

***Second Schedule***

Land at 102 Edinburgh Road, Liverpool L7 8RF

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: 1 February 2024

**by A Walker MPlan MRTPI**

**Land at: 102 Edinburgh Road, Liverpool L7 8RF**

**Reference: APP/Z4310/X/23/3331151**

Scale: Not to Scale

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