



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

Appeal Ref: APP/Z4310/X/23/3325954
66 Rooms, Kensington, Liverpool L7 8XB

- 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 Daniel Burman against the decision of Liverpool City Council.
 - The application ref 22LE/3417, dated 12 December 2022, was refused by notice dated 8 June 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 use as a dwellinghouse in multiple occupation with Use Class C4 of the Town and Country Planning (Use Classes) Order 1984 as amended.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant objects to the Council's use of a slightly different description of the development that the LDC is sought for. The Town and Country Planning Act (Use Classes) Order 1987 describes Class C4 uses as 'Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"'. Therefore, it was not unreasonable for the Council to include '...for no more than six residents' in the description as it simply confirms what a Class C4 use is. Nevertheless, its inclusion was not necessary as the appellant's description in their application clearly identified the use as a 'Use Class C4'. Accordingly, for the sake of conciseness, I have used the appellant's description.

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) 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.

5. 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 came into effect on the 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).
6. There is no dispute between the parties that up until 30 June 2020, the appeal property was occupied as a house in multiple occupation (HMO) by six individuals and that immediately after the Article 4 Direction came into effect and up until the date the LDC application was made, the appeal property was occupied as an HMO by eight individuals.
7. Section 191(1)(a) of the Town and Country Planning Act 1990 (the Act) states 'If any person wishes to ascertain whether any existing use of buildings or other land is lawful he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.' I note the appellant's statement that the property is currently occupied by six individuals. However, my consideration of the appeal matters is restricted to whether the use of the appeal property at the time the LDC application was made was lawful. Therefore, the crux of the matter is whether the use of the appeal property as an 8 person HMO at the time the LDC was made resulted in a material change of use from its prior use as a Class C4 HMO.
8. The transition from one use class to another is not in itself enough to indicate that a material change of use has occurred. A change of use can only be material by bringing about a definable change in the character of the main use of the land. In other words, there needs to be some significant difference in the character of the activities from what has gone on previously.
9. The appeal property is located on a busy road within a mixed-use area, comprising various commercial and residential properties. The appeal property consists of a mid-terrace, three-storey building. The ground floor appears to have once been a commercial property as some of the original shop frontage detailing remains. Many other properties along the terrace appear to have been similarly converted. It is not clear from the evidence before me or from my own observations on site whether the other properties in the terrace are HMOs or in single family occupation.
10. The comings and goings of an additional two people, from six to eight, would not likely be discernible on the busy road and within such a built-up area. Nevertheless, the intensified activities within the property could result in a material change to the character of the use.
11. The kitchen would be used more intensively. With eight people using it instead of six, it would likely be in use for a significantly longer period during meal times. In addition, the single communal living room could similarly be used more intensively. Although not all eight occupants would likely use it at the same time, it would likely be used more frequently, resulting in the television

and general conversations being noticeable by adjoining neighbouring occupants through the party wall for longer periods throughout the day/night. In addition, two additional people would likely result in each occupant having their own television and music devices. All eight occupants potentially having their televisions on or playing music at the same time would also likely be noticeable through the party walls. Moreover, two additional occupants would likely increase the number of visitors to the property, such as friends, family and parcel and food deliveries.

12. Individually, the intensification of these activities would not likely result in a material change in the character of the use of the property. However, when considered cumulatively, I find there would be a significant difference in the character of the use to such an extent that there would be a material change of use.
13. The appellant contends that the change to eight occupants has not resulted in any harm. However, the question of whether there is any harm is irrelevant to the consideration of whether or not there is a material change in the character of the use. In addition, I do not consider the occupation of the property as an 8 person HMO for a period of 13 months between the 1 July 2021 and 12 December 2022 (date on which the LDC application was made) to be so temporary in nature that it would not amount to an break in the C4 use of the property.
14. I find therefore, the change of use of the appeal property from the Class C4 use for six individuals to a large HMO for eight people resulted in a material change in the use of the property that amounted to development as defined in s55 of the Act. Planning permission for the material change of use was required. As planning permission has not been granted, the use of the appeal property for an HMO for eight individuals at the time the LDC application was made was unlawful.

Conclusion

15. I therefore conclude that the Council's decision to refuse to issue an LDC was well-founded and the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

A Walker

INSPECTOR