



Appeal Decision

Site visit made on 2 January 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2024

Appeal Ref: APP/Z4310/X/23/3334516

27 Channell Road, Liverpool L6 6DD

- 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 Proz Ltd against the decision of Liverpool City Council.
 - The application ref 22LE/1578, dated 6 June 2022, was refused by notice dated 26 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 house in multiple occupation for 3-6 persons (Use Class C4).
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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.

Preliminary Matter

2. The name of the appellant on the appeal form differs to that on the LDC application form. However, the appellant has confirmed the name on the appeal form was made in error and that the appellant is Proz Ltd.

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. Given the above, the application for the LDC sought to confirm that the appeal property was in use as a C4 Use Class prior to the date on which the Article 4 Direction came into effect, 17 June 2021, and therefore did not involve development requiring planning permission.
 7. The Council's Case Officer Report refers to 6 individual Assured Shorthold Tenancy Agreements (ASTs) for tenants of the appeal property. The Report confirms the term of only one of these ASTs covers the period of 17 June 2021. The terms of the other ASTs are dated post 17 June 2021.
 8. Notwithstanding the above, the appellant has provided copies of additional ASTs with the appeal for 5 individual people occupying the property at the same time, covering the period prior to and extending beyond 17 June 2021. 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. In the absence of any evidence to the contrary, it is reasonable to conclude these individuals proceeded to occupy the appeal building in accordance with the terms of the ASTs.
 9. I find therefore, the evidence is sufficiently precise and unambiguous 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

10. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) 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 6 June 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 came into effect (17 June 2021) and up until the date of the application and therefore did not require planning permission.

Signed

A Walker

Inspector

Date: 4 March 2024

Reference: APP/Z4310/X/23/3334516

First Schedule

A house in multiple occupation for 3-6 persons (Use Class C4)

Second Schedule

Land at 27 Channell Road, Fairfield, LIVERPOOL, L6 6DD

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: 4 March 2024

by A Walker MPlan MRTPI

Land at: 27 Channell Road, Liverpool L6 6DD

Reference: APP/Z4310/X/23/3334516

Scale: Not to Scale

