The Planning Inspectorate

Appeal Decision

Site visit made on 8 April 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2024

Appeal Ref: APP/Z4310/X/23/3329580
40 Gresford Avenue, Liverpool L17 2AW

- 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 Tim Cowell against the decision of Liverpool City Council.
- The application ref 23LE/086, dated 27 March 2023, was refused by notice dated 26 April 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 bed HMO.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development (LDC) is well-founded.

Reason

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. The Town and Country Planning (Use Classes) Order 1987 (the UCO) defines a Class C4 House in Multiple Occupation (HMO) as a use of a dwellinghouse by not more than six residents as a house in multiple occupation. Therefore, an HMO in occupation by more than six residents would be sui generis. In defining a Class C4 use, the UCO refers to the number of residents, not the number of bedrooms. Thus, the same must be for a larger HMO.

5. Given the above, for the use to be lawful through the passage of time, it must be established that the use of the appeal property materially changed to a use for a 7 person HMO 10 years prior to the date of the LDC application, namely

27 March 2013, and the use then continued for at least 10 years thereafter, without significant interruption.

6. The Assured Shorthold Tenancy Agreements (ASTA) indicate the appeal property was occupied by six residents from 1 July 2012 up until 18 January 2014 when it was occupied by seven residents. Therefore, it was in Class C4 use, as defined by the UCO, during and after 27 March 2013. It was only from 18 January 2014 that it was in use as a 7 person HMO, which was less than 10 years prior to the date of the LDC application.

7. I have had regard to the appellant's argument that a reduction in the number of residents does not necessarily result in a material change in the use of the property. This can be true, depending on the circumstances of the particular case. However, in this instance, the appeal property was in use as a Class C4 use at the start of the 10 year requisite period. It started with six residents (Class C4) and then increased to seven (sui generis).

8. The appellant cites a previous appeal decision[1] in support of their argument that a change in the number of residents does not constitute a material interruption of the use. However, in that case the Inspector stated that a sui generis HMO is defined as five or more people who form more than one household. The reduction of residents in that case from seven to five would therefore mean the property was still within the sui generis HMO use. However, having regard to the UCO, a sui generis HMO comprises seven or more residents, not five. Accordingly, I do not find this decision weighs in favour of the appellant's case.

9. The Council tax details indicate the appeal property was exempt from Council tax for a number of the requisite 10 years due to it being occupied by students. However, it is not clear whether the 'No. Student Residents' column is in reference to the number of students actually occupying the property at the time or whether the property was exempt from paying Council Tax as it was occupied by up to seven students. Having regard to the ASTAs covering the June 2012 to July 2013 period, it is reasonable to conclude it means the latter.

10. I find therefore, the evidence before me is not sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the use of the appeal property materially changed to a 7 person HMO 10 years prior to 27 March 2023. As planning permission has not been granted for the use of the appeal property for a 7 person HMO at the time the LDC application was made, the use is unlawful.

Conclusion

11. 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

[1] Appeal reference APP/Z4310/X/22/3292897