



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/24/3336577

97 Boswell Street, Liverpool L8 0RN

- 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 Tanzeel Rehman on behalf of Bric Management NW Ltd against the decision of Liverpool City Council.
 - The application ref 23LE/2466, dated 4 October 2023, was refused by notice dated 17 November 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 6 bedroom HMO.
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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 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).

5. Given the above, the question is whether the use of the property materially changed to use as a C4 Use Class house in multiple occupation (HMO) after the Class L(b) permitted development rights came into force, but prior to the date on which the Article 4 Direction came into effect (17 June 2021) and therefore had the benefit of planning permission.
6. The appellant has provided a copy of an Assured Shorthold Tenancy Agreement (ASTA) for the appeal property with five named individuals as tenants. However, the term of this ASTA is 1 September 2015 to 30 June 2016. This does not indicate what the use of the appeal property was on 17 June 2021.
7. Notwithstanding this, copies of a further three ASTAs have been submitted. The term of tenancy for each of these is 1 February 2020 to 30 November 2020 (Siobhan Birch); 1 September 2019 to 30 June 2020 (Gwen Owen-Mardy and Martha Cottrell); and, 1 September 2020 to 28 February 2021 (Molly Sayers). Whilst the end of the term of each of these ASTAs pre-dates 17 June 2021, the appellant confirms in their statutory declaration that each of the tenants extended their tenancy. This is supported by the Account Statement prepared by Mistoria Estate Agents for 1 September 2020 to 30 September 2021, which indicates that these four tenants made rental payments for the appeal property during 2021. Accordingly, this indicates the appeal property was in use as a C4 Use Class HMO during its occupation by these four individuals.
8. Only one of the named tenants remained in the property up until and after 17 June 2021, with the others ending their tenancy in February and March 2021. However, this appears to be as a result of the planned significant repair works to the property that took place in October 2021 that required the property to be vacant during this time. Therefore, due to the planned repair works, I do not consider that the occupation of the property by a single tenant for approximately six months resulted in a material change in the use of the property from a C4 Use Class HMO.
9. I find therefore, the evidence is sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the use of the appeal property changed to a C4 Use Class house in multiple occupation after Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 came into force, but before the Article 4 Direction came into effect. The use then continued up to the date of the LDC application.

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



The Planning Inspectorate

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 4 October 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:

The evidence is sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the use of the appeal property changed to use as a Class C4 house in multiple occupation after Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 came into force, but before the Article 4 Direction came into effect. The use then continued up to the date of the LDC application.

Signed

A Walker

Inspector

Date: 25 April 2024

Reference: APP/Z4310/X/24/3336577

First Schedule

6 bedroom HMO.

Second Schedule

Land at 97 Boswell Street, Liverpool L8 0RN

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: 25 April 2024

by A Walker MPlan MRTPI

Land at: 97 Boswell Street, Liverpool L8 0RN

Reference: APP/Z4310/X/24/3336577

Scale: Not to Scale

