



Appeal Decision

Site visit made on 8 April 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 July 2024

Appeal Ref: APP/Z4310/X/23/3325609

80 Portman Road, Liverpool L15 2HJ

- 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 Abu Sahied Ahmed against the decision of Liverpool City Council.
 - The application ref 22LE/2667, dated 30 September 2022, was refused by notice dated 1 December 2022.
 - 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 6 persons (Use Class C4).
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Decision

1. The appeal is dismissed.

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) of the Schedule to the Town and Country Planning (Use Classes) Order (UCO) 1987 to a use falling within Class C4 (houses in multiple occupation) of the UCO.
5. Given the above, the question is whether the use of the property changed to 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 an extract of an Assured Shorthold Tenancy Agreement (ASTA) made on 10 January 2001 for a term of 12 months. The ASTA names five tenants. The appellant also states that in 2016 the appeal property was rented to a family but there were up to five tenants temporarily with the addition of students. It is not clear what is meant by 'there were up to five tenants temporarily with the addition of students'.
7. The appellant then confirms that all tenancies had to be terminated to enable renovation works to take place on the property. They confirm that due to the costs of the works it would not be economically viable to rent it out or sell it as a family home and therefore it was decided to turn it into an HMO. This indicates that, prior to the renovation works taking place, the property was in use as a single occupancy dwelling, not an HMO.
8. I note that an application was made for an HMO licence in July 2021 but the appellant confirms the fee was returned as the tenancy had not yet started. A planning application was also submitted in October 2021 for the conversion of the property into a 7 bedroom HMO. The appellant commenced the renovation works three months after the application was submitted.
9. The appellant confirms it was not until May 2022 that the appeal property came into use as a 6 person HMO. Prior to this, the evidence indicates that it was last in use as a single occupancy dwelling. Given the Article 4(1) Direction came into effect on 17 June 2021, the appeal property no longer benefitted from the permitted development rights to change the use of the property from a C3 Use Class dwelling to a C4 Use Class HMO without the need for express planning permission. Therefore, the material change of use of the property to a C4 Use Class HMO required planning permission.
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 from a C3 Use Class dwelling to a C4 Use Class HMO prior to 17 June 2021. As planning permission has not been granted for the use of the appeal property for a C4 Use Class HMO at the time the LDC application was made, the use is unlawful.

Other Matters

11. I have had regard to the appellant's argument that they were not aware of the existence of the Article 4(1) Direction. Nevertheless, I have been provided with a copy of the Direction and there is no evidence before me that it was not made and subsequently confirmed in accordance with the correct legislation.

Conclusion

12. 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