

Appeal Decision

Site visit made on 23 July 2024

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 16 August 2024

APP/Z4310/X/24/3338132

48 Thornycroft Road, Liverpool L15 0EW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal by Liverpool City Council to grant a certificate of lawful use or development.
- The appeal was made by Tanzeel Rahman.
- The application, reference 23LE/3110, was dated 12 December 2023. It was refused by a notice dated 31 January 2024.
- The Application was made under section 191(1)(a) of the Act for a certificate of lawfulness for use of the existing dwelling as a House of Multiple Occupation for 3 - 6 persons, (Use Class C4), at No. 48 Thornycroft Road, Liverpool L15 0EW.

Summary of decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 26 July 2024

Appeal property

1. The appeal property, No. 48 Thornycroft Road, is a 2 storey mid-terrace house in a road of similar houses. It has recently undergone extensive renovation and internal reconstruction work.

Inspector's conclusions

Selected legal background:

2. S.191(1) of the Act provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; they may make an application for the purpose to the Local Planning Authority. Where that application is refused and an appeal against that decision is made, the burden of proof to show that the decision was not well founded lies with the appellant.
3. S.195(1) provides that an appeal may be made to the Secretary of State where an application under s.191 or s.192 is refused. S.195(2) and (3) provide that, on appeal, the Secretary of State shall grant a Lawful Development Certificate (LDC) if refusal is not 'well-founded'.
4. The purpose of the LDC provisions is to enable the making of an objective decision based on the best facts and evidence available when the decision is

taken. Evidence should not be rejected simply because it is uncorroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted, (*Gabbitas v SSE & Newham BC [1985]* JPL 630, also see *Ravensdale Ltd v SSCLG*).

5. The Town and Country Planning (Use Classes) (Amendment)(England) Order 2010 introduced a new Use Class (houses in multiple occupation, Use Class C4) - Article 2(4). It covered use of a dwellinghouse as a house in multiple occupation as defined in section 254 of the Housing Act 2004. A dwelling that falls within Use Class C4 is a small shared house occupied by between 3 and 6 unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. From 1 October 2010 a change of use from a dwelling (C3) use to use as a House in Multiple Occupation (HMO) (C4) use did not require planning permission.

Considerations:

6. Liverpool City Council's reason to refuse to grant a certificate of lawful use said: "*The local planning authority, based on the limited evidence provided to the Council, is not satisfied that the use was subsisting during the period from the coming into force of the Article 4 Direction for the area on 17 June 2021 removing permitted development rights for change of use from a Class C3 Dwellinghouse to a Class C4 small HMO and ending with the date of the application.*". In my view, that decision does not deal with whether an HMO use subsisted in the period 17 June 2021 to 12 December 2023. The Appellant's evidence was that there were 4 individual persons sharing No. 48 Thornycroft Road in July 2014, in February 2015 and in March 2016. Thereafter, he said 3 individuals occupied No. 48 in July 2020, in July 2022 and in July 2023.
7. If, as the uncontested Appellant evidence shows an HMO use of No. 48 Thornycroft Road started on or before 2014, that use would have been lawful as a change of use from a C3 dwelling use to a C4 HMO use was permitted by the General Permitted Development Order Amendment from October 2010. That C4 lawful use would have subsisted throughout the period to 12 December 2023 unless abandoned or extinguished by a change of use to another lawful use, possibly including a reversion to an earlier C3 dwelling use. If there had been a change back to a C3 use, (a change not requiring planning permission), planning permission would have been required to change back to a C4 use if that change had occurred after the coming into force of the Article 4 Direction for the area on 17 June 2021 removing permitted development rights for change of use from a Class C3 Dwellinghouse to a Class C4 small HMO. However, there was no evidence of such a loss of HMO lawfulness.
8. The Council's case was that there was not a lawful HMO use of No. 48 at the time of the change of permitted development rights brought about by the Article 4 Direction for the area on 17 June 2021 and that no HMO lawful use had subsisted up to the LDC application date. However, if as appears here, a lawful HMO use had already commenced, that lawful use could cease for periods of time without losing lawfulness, (*Panton & Farmer v SSETR & Vale*

of White Horse DC [1999] JPL 461). That is, unless there had been a change of use back to a lawful single dwelling residential use.

9. The wording of subsections (2) and (3) s.195 of the Act might suggest that appeals are strictly limited to a review of the local planning authority's decision. However, they are to be treated as new appeals; the parties and interested persons may submit additional evidence to the Secretary of State which was not before the authority at the time of its decision. It is not clear that the Council noted the Appellant's assertion that the HMO use had started at a time when a change of use from single residential dwelling to an HMO was permitted development. There was an opportunity for the Council to take account of the HMO pre-2021 lawful use in their representations following the appeal. They did not.
10. There was no evidence of a reversion from the lawful HMO use to a lawful single dwelling use.

FORMAL DECISION

11. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the use of No. 48 Thornycroft Road, Liverpool L15 0EW as a house in multiple occupation for 3 to 6 persons, (Use Class C4), was not well founded and that the appeal should succeed. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as is the plan as submitted with the application.

John Whalley

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 (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 12 December 2023 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, was lawful within the meaning of section 191(1)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use of the property from a C3 dwelling use to a C4 HMO use was permitted by the General Permitted Development Order Amendment from October 2010.

John Whalley

INSPECTOR

Date: 16 August 2024

Reference: APP/Z4310/X/24/3338132

First Schedule

Use of the property as a House of Multiple Occupation for 3-6 persons, (Use Class C4).

Second Schedule

No. 48 Thornycroft Road, Liverpool L15 0EW.

IMPORTANT NOTES OVERLEAF NOTES

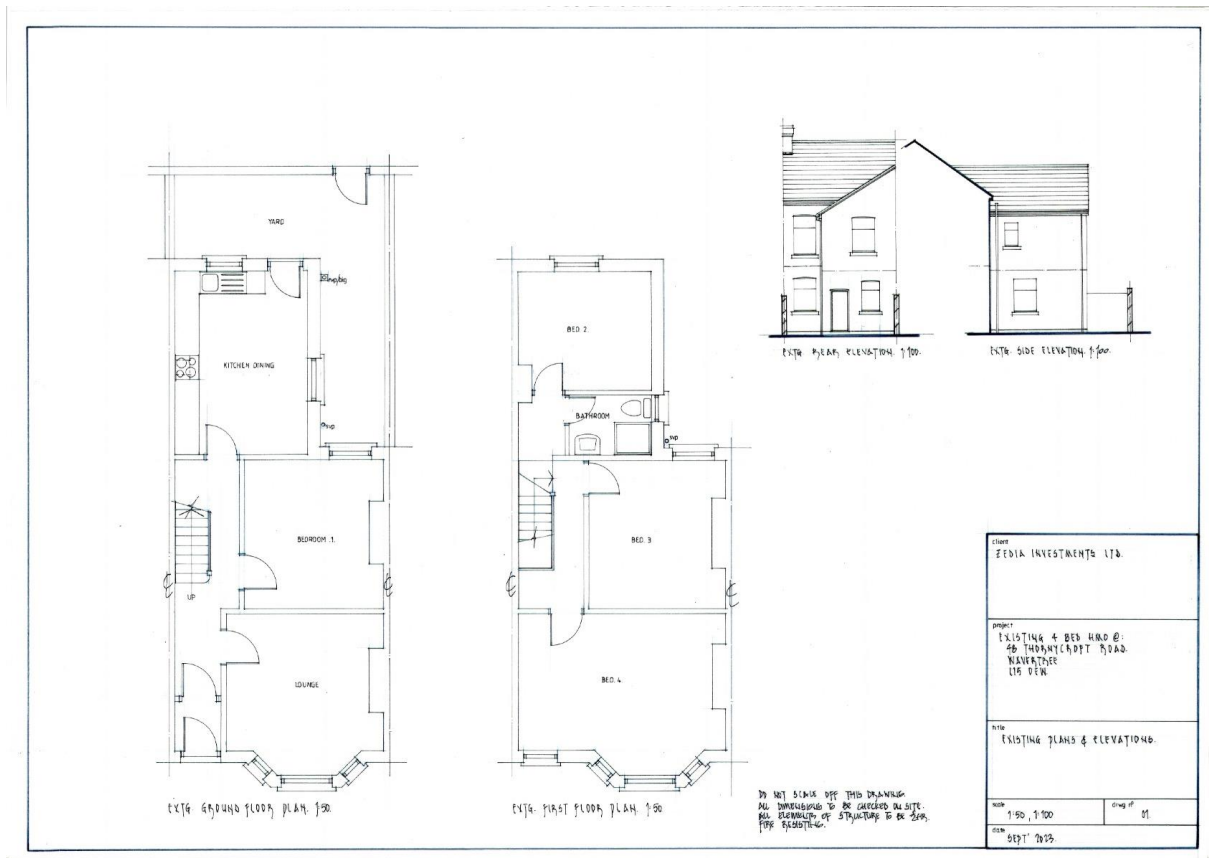
1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

2. It certifies that the development described in the First Schedule and specified in the Second Schedule was lawful on the certified date and thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 191(6) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Lawful Development Certificate Plan

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No. 48 Thornycroft Road, Liverpool L15 0EW



Plan attached to the Lawful Development Certificate – No scale

John Whalley

INSPECTOR