

Appeal Decision

by Siobhan Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2024

Appeal Ref: APP/Z4310/X/23/3335601

102 Claremont Road, Wavertree, Liverpool, L15 3HL

- 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 Jordan Silverstone against the decision of Liverpool City Council.
 - The application ref 23LE/1729, dated 11 July 2023, was refused by notice dated 6 October 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 C4 house in multiple occupation.
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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 19 July 2018 and removes the permitted development rights conferred by Schedule 2, Part 3, Class L(b), i.e., the change of use from a use falling within

Class C3(dwellinghouses) to a use falling within Class C4(houses in multiple occupation).

5. For the HMO to be lawful, it must have come into use before 19 July 2018 and there must not have been a material change of use after that date., i.e., it must have remained in that use since before the Article 4 direction came into force.
6. The appellant has submitted a statutory declaration dated 5 September 2022 by a Mr Burns, stating that the house has been exclusively and continuously used as a C4 HMO since 30 June 2011. It says that tenancy agreements evidencing that exclusive and continued use are attached as Exhibit 1. The exhibits attached to that statutory declaration are:
 - An assured shorthold tenancy agreement (ASTA) for 1 July 2014 to 30 June 2015 for 5 tenants;
 - A Council tax bill exempting the property for student occupation dated February 2015;
 - An ASTA for between 1 July 2017 to 30 June 2018 for 5 tenants;
 - An ASTA for between 1 July 2018 to 30 June 2019 for 5 tenants;
 - An ASTA for between 1 July 2019 to 30 June 2020 for 5 tenants;
7. In addition, an ASTA has been submitted for 1 July 2023 to 30 June 2024 for 6 tenants.
8. Given the statutory declaration with the attached tenancy agreements, the evidence is that a change of use to a C4 HMO occurred before the Article 4 Direction came into force and that the HMO use continued at least until the end of June in 2020. The additional AST provides evidence that the property was also being used as a HMO between 1 July 2023 and 30 June 2024. However, no tenancy agreements have been submitted for the period between the end of June 2020 and the beginning of July 2023.
9. The period without tenancy agreements coincides with the period that the Council reports that neighbours made representations to say that from around spring 2020 the property was empty for a year and then a four-person family lived in it for a year before it was empty again for a year. However, these representations were not shared with the appellant and the Council has failed to provide them to me, even though I have specifically requested them. I, therefore, do not take the alleged representations into account. Nevertheless, my decision does not turn on this matter.
10. The tenancy agreements that are attached to the statutory declaration as Exhibit 1 only show the house being used as a HMO up until the end of June 2020. The specific reference to the tenancy agreements in the statutory declaration makes the period it covers ambiguous., i.e. is it not clear if the continuous use described covers the period from 30 June 2011 until the statutory declaration was signed on 5 September 2022 or whether the continuous use covers the period from 30 June 2011 until the end of the tenancy agreements referred to, i.e., until the end of June 2020.

11. Regardless of the ambiguity, the lack of tenancy agreements for the period between the end of June 2020 and the beginning of July 2023, casts doubt on the appellant's claim that the HMO use was continuous until the date of the LDC application. The HMO use will have been lost if there had been a material change of use since the Article 4 Direction came into effect in 2018.
12. The onus of proof is firmly on the appellant to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate. Overall, I find that the appellant's evidence, on the balance of probabilities, does not meet this requirement. As with all LDC applications, it is open for fresh applications to be made if, for example, other evidence comes to light.

Other Matters

13. The appellant has provided 4 appeal decisions¹ relating to the lawfulness of HMOs on other sites in order to support his case. However, the findings and comments made by the Inspectors in these appeals were made in the context of those cases. They were all at different properties with different evidence submitted. I have considered this case on its own particular merits.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "a C4 house in multiple occupation" was 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.

Siobhan Watson

INSPECTOR

¹ APP/Z5060/C/16/3142252; APP/Z4310/X/22/3296202; APP/Z4310/X/22/3298015; APP/Z4310/X/23/3315708