

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/23/3335949

38 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 Jordan Silverstone against the decision of Liverpool City Council.
 - The application ref 23LE/1922, dated 31 July 2023, was refused by notice dated 5 October 2023.
 - The application was made under section 191(1)(a) and (b) 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 Use Class HMO, facilitated by a single storey rear extension, rear dormer, and rooflights to the front elevation.
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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 C4 Use Class HMO, facilitated by a single storey rear extension, rear dormer, and rooflights to the front elevation which is found to be lawful.

Preliminary Matters

2. The Council did not provide a reason for refusal on the decision notice. Nevertheless, it is clear from the Officer Report that the reason the Council refused to issue the LDC is because it considered that the evidence was not sufficiently precise and unambiguous in relation to the C4 use.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

The HMO

4. 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 the appellant's evidence alone is sufficiently precise and unambiguous.

5. A Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) 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), i.e., 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). For the HMO to be lawful, it must have come into use before that date.
6. There is no dispute between the parties that the house was occupied by a family until 7 December 2020. The appellant's case is that unrelated tenants moved into the house after this, before the Article 4 Direction (A4 Direction) came into effect on 17 June 2021. A House Share Tenancy Agreement, dated 9 December 2020, has been provided and it is signed by 3 tenants. The agreement does not have an end date and the term is "rolling weekly".
7. However, the Council has submitted emails from Council Tax which say that between the 8 December 2020 and 30 June 2021 the house was unoccupied and that a student exemption began on 1 July 2021. This conflicts with the 9/12/2020 tenancy agreement. The appellant's explanation for this is that the property was sold to him on 7 December 2020 and the Council Tax records were not updated.
8. In relation to a previous appeal on the site¹, an Inspector visited the house on 20 July 2021. In her decision she commented, "I have no evidence to the contrary that the property is not in use as an established 6 bed HMO, which appears it has been for some time." The relevant part of this statement is that it appeared to the Inspector that the HMO had been in use for some time. She visited it just over a month after the A4 Direction came into effect. In addition, the description of development on her appeal decision includes the words "*change of use from a C4 use class HMO*", i.e., stating that it was already an HMO, and the application was dated 17 December 2020, well before the date of the A4 Direction.
9. The appellant has also submitted a statutory declaration (SD), dated 11 July 2023, which says that the property has been exclusively and continuously used as a C4 HMO since 7 December 2020. The Council has raised concerns that the SD is not stamped. However, it is signed by a solicitor empowered to administer oaths. There is no claim from the Council that it is not signed by a solicitor. There is no legal requirement that the signature must be accompanied by a stamp.
10. The Council Tax records show the house as being unoccupied on the date the A4 Direction came into force, so I accept that there is some conflict in the evidence before me. However, against the Council's evidence in this respect, I have to balance the appellant's evidence that the change of use to C4 HMO

¹ Appeal Ref: APP/Z4310/W/21/3269276

occurred before that date. The appellant's evidence is the SD; the House Share Tenancy Agreement which started before the date of the A4 Direction; the description of the existing use on the s.78 appeal application; and the comments of the Inspector dealing with that appeal.

11. Three tenancy agreements have been submitted covering the period between 1 July 2021 to 30th June 2024. There is no dispute that the property has been occupied as a HMO over this period.
12. Taken as a whole, 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 before the A4 Direction came into effect and continuously remained as such since then.

The building operations

13. The building operations are a single storey rear extension, a dormer at the rear and two rooflights on the front roof plane.
14. The GPDO Schedule 2, Part 1, Class A "*enlargement, improvement or other alteration of a dwellinghouse*" includes extensions. GPDO Schedule 2, Part 1, Class B "*additions etc to the roof of a dwellinghouse*", includes dormers. GPDO Schedule 2, Part 1, Class C allows "*Any other alteration to the roof of a dwellinghouse*" which allows for roof lights. The Council does not contest the appellant's evidence that the building operations are permitted development and I have no reason to find otherwise.

Conclusion

15. 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.

Siobhan Watson

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 (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)

ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 31 July 2023 the use and operations 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, were lawful within the meaning of section 191(2)(a) and (b) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the date of the application the change of use had already occurred under permitted development under Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 before the Article 4 Direction removing such permitted development rights came into force.

The building operations constitute permitted development under Schedule 2, Part 1 Classes A, B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Siobhan Watson

Inspector

Date: 10 September 2024

Reference: APP/Z4310/X/23/3335949

First Schedule

C4 Use Class HMO, facilitated by a single storey rear extension, rear dormer, and rooflights to the front elevation.

Second Schedule

Land at 38 Portman Road, LIVERPOOL, L15 2HJ

Plan

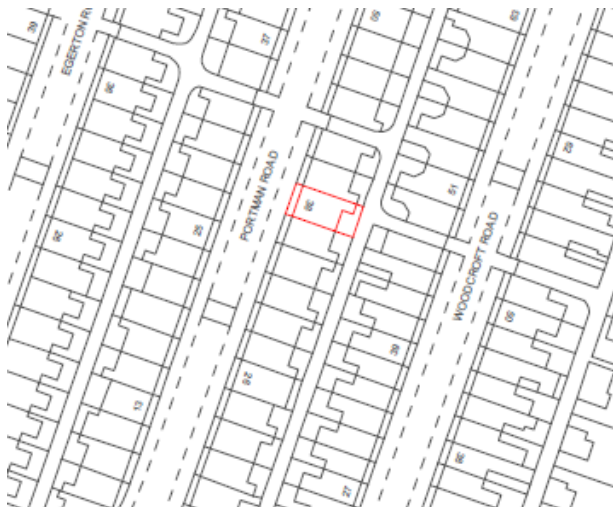
This is the plan referred to in the Lawful Development Certificate dated:10 September 2024

by Siobhan Watson BA(Hons), MCD, MRTPI

Land at: 38 Portman Road, LIVERPOOL, L15 2HJ

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Scale: Not to Scale



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.