

Appeal Decision

Site visit made on 3 October 2024

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 10th October 2024

APP/Z4310/X/24/3341604

4 Rossett Avenue, Liverpool L17 2AP

- The appeal is made under section 195 of the Town and Country Planning Act 1990, (the Act), 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 Your Place Ltd.
- The application, reference 24LE/0520, was validated on 26 February 2024. It was refused by a notice dated 21 March 2024.
- The Application for a Certificate of Existing Lawful Development for a 7 Bed House in Multiple Occupation (HMO) - Sui Generis was made under section 191(1)(a) of the Act in respect of No. 4 Rossett Avenue, Liverpool L17 2AP.

Summary of decision: The appeal is not allowed. A certificate of lawful use or development is not issued.

Appeal property

1. The appeal property, No. 4 Rossett Avenue, is a red brick 2 storey end of terrace house in an urban road of similar properties. It is understood that it is used as a 7 Bed House in Multiple Occupation, (HMO). Application plans show 5 bedrooms, an open lounge, dining area and kitchen on the ground floor, with 2 bedrooms and 2 bathrooms on the first floor.

Considerations

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 the decision was not well founded lies with the appellant.
3. 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 of ten years ending with the date of the application."*
4. The application, reference 24LE/0520, for a certificate of lawfulness was validated on 26 February 2024. It was necessary therefore for the Applicants to show that No. 4 Rossett Avenue was in continuous use as a 7

Bed HMO in the 10 year period from at least between 26 February 2014 and 26 February 2024, (s.171B of the Act).

5. Liverpool City Council said the evidence provided by the Applicants fell short by 16 months. Assured shorthold tenancy, (AST), details had not been submitted for the time between 26 February 2014 and 30 June 2015. There had been no other persuasive evidence to show that the property had been in use as 7 Bed HMO in that period. The Council further said that the tenancy details for 2021/22 had been DocuSigned. The tenants appeared to be the same as those in 2020/21 and as those in 2022/23. No explanation or supporting documents in the form of the original certificates were provided to substantiate the corresponding reference numbers that appear next to the DocuSigned signatures for 2021/22 AST list. In the Council's view, there had been inadequate evidence to show that the property was in use as a 7 Bed HMO in that period.
6. I note that the first of the Applicants' list of tenancy agreements gives the Tenancy Agreement date of 24 November 2014. It shows an agreement period of 52 weeks from 1 July 2015 to 30 June 2016. The next 8 tenancy agreements cover periods from 1 July 2016 to 30 June 2024. Those agreements do not cover the period from 26 February 2014 to 1 July 2015. Even assuming the accuracy of those agreements, they do not show a continuous 10 year breach of planning control period. An Applicant statement dated 27 March 2024 shows a list of payments due from tenants of deposits and rents and headed July 2013 to March 2024, but in fact ends at 20 May 2014.
7. Although a substantial amount of information was provided by the Applicants it did not, in my view, amount to a cogent or comprehensive case sufficient to issue a certificate of lawfulness for the use of No. 4 as a 7 person HMO. HMO licenses and Council Tax exemptions may have shown the letting of rooms, particularly to students, over a substantial period. But the details supplied did not amount to a case that demonstrated a 10 year period of use of No. 4 as a 7 bed HMO up to 26 February 2024 and that such use continued to the extent that the Council could have taken enforcement action at any time in that period, (*Thurrock BC v SSETR & Holding* (COA 27.2.02, J 1080).

FORMAL DECISION

8. For the reasons given above, I conclude that the Council's refusal to grant a lawful development certificate for the use of No. 4 Rossett Avenue, Liverpool L17 2AP as a 7 Bed House in Multiple Occupation (HMO) - Sui Generis was well founded and that the appeal should fail. I exercise the powers transferred to me by s.195(3) of the Act.

John Whalley

INSPECTOR