

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/24/3338893

37 Arundel Avenue, Liverpool L17 3BY

- 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 Hawkesmoor Properties.
- The application, reference 23LE/2741, was validated 3 November 2023. It was refused by a notice dated 28 December 2023.
- The Application for a Certificate of Existing Lawful Development for a Sui Generis larger HMO was made under section 191(1)(a) of the Act in respect of No. 37 Arundel Avenue, Liverpool L17 3BY.

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. 37 Arundel Avenue, is a semi-detached house in an urban road of red brick houses. During my site inspection, I saw there were 8 bedrooms, a shared ground floor kitchen and a shared kitchenette on the first floor. Each bedroom had an attached small self-contained shower and w.c./basin room. There was a shared lounge and gymnasium in the basement. All letting rooms were occupied.

Application and Reason for refusal

2. The application claims that No. 37 Arundel Avenue had been used as a House of Multiple Occupation, (HMO), for 8 persons for a period of at least 10 years dating back from the certificate of lawful use application validated by Liverpool City Council on 3 November 2023.
3. The 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.*"

Considerations

4. 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.

5. The Applicant company, Hawkesmoor Properties, said they bought the property in 2019 as an 8 Bedroomed house in multiple occupation, (HMO). At that stage it was a tired multi let house, mainly used as student housing. There was an HMO licence in place. It had since continued to run as such with an HMO license from Liverpool City Council. However, due to the property being bought in 2019, evidence such as earlier assured tenancy agreements were not available.
6. The Council pointed to a listing purported to show the residents of the property on the annual electoral role. An analysis indicated numbers of residents for each specified period within the relevant 10 year period: 2012-2013: 8 occupants; 2013: 1 occupant; 2014-2016: 8 occupants; 2016-2019: 1 occupant; 2021: 1 occupant. No occupants were recorded for 2022 or 2023. They said those figures did not support the contention of continuous use of the property as an 8 bedroom HMO during the relevant 10 year period.
7. I agree with the Council that evidence for a continuous use of the application property at No. 37 Arundel Avenue as a sui generis, (of its own kind), 8 bed HMO during the 10 year period to 3 November 2023 was sparse or unavailable. The list of tenancy agreements simply showed a number of occupants in the period from October 2020. No details or information for that part of the 10 year period before the Applicants bought No. 37 was produced or was said to be available.
8. The Applicants did not produce information to show that use of No. 37 as an 8 bed HMO for a 10 year period of up to or before 3 November 2023 had taken place 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)*).
9. National Planning Policy Guidance requires evidence to be precise and unambiguous. In the present instance the evidence provided does not meet these criteria and the evidence for existing use is not considered to satisfy the provisions of Section 191(2)(a) read with Section 171B(3) of the Act.

FORMAL DECISION

10. For the reasons given above, I conclude that the Council's refusal to grant a lawful development certificate for the use of No. 37 Arundel Avenue, Liverpool L17 3BY as a Sui Generis HMO was well founded and that the appeal should fail. I exercise accordingly the powers transferred to me by s.195(3) of the Act.

John Whalley

INSPECTOR