The Planning Inspectorate

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/24/3336797
208A Smithdown Road, Liverpool L17 3JT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), 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 Namit Investments Ltd.
- The application, reference 22LE/1921, was dated 19 July 2022. It was refused by a notice dated 24 October 2023.
- The Application for a Certificate of Existing Lawful Development for a C4 HMO use was made under section 191(1)(a) of the Act in respect of the 1st and 2nd floors of No. 208A Smithdown Road, Liverpool L17 3JT.

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

Appeal property and application

1. The appeal property, No. 208A Smithdown Road, Liverpool, comprises the 2 floors above the ground floor of the mid terrace public house at No. 208. Floor plans show 5 bedrooms on the 2 upper floors.

2. The appeal claim is that the upper floors at No. 208A Smithdown Road had been used as a House of Multiple Occupation, (HMO), for 5 persons, (Use Class C4), for a period of at least 10 years dating back from the application for a certificate of lawful use made on 19 July 2022.

Inspector considerations

3. 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.

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, and Para 006 NPPF - Planning practice guidance*).

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 s.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 does not require planning permission.

6. However, a Liverpool City Council Article 4 Direction came into force on 17 June 2021 in the area covering the application site address, removing permitted development rights for conversion from a Use Class C3 dwellinghouse to a Use Class C4 small HMO. The Council noted that as part of the Article 4 process, dwellings that were lawful 3 – 6 person HMOs before 17 June 2021 would not be caught by the Direction.

7. The Council concluded, on the basis of the supplied documentation, the use of No. 208A Smithdown Road had not become that of a lawful Class C4 HMO. They said it had not been shown, on the balance of probability, the property had been in uninterrupted such use either before or since the coming into effect of the Article 4 direction on 17 June 2021.

8. The Applicants, Namit Investments Ltd, said they purchased No. 208A Smithdown Road in March 2013. It was an existing HMO with tenants in place. The previous letting agent could confirm he managed the property as an HMO for the previous owner from 2004. It had continued as such since. There had been no change of use by the Applicants.

9. It appears that the previous managing agents, Rooms Liverpool, had deleted all No. 208A property records after they ceased trading in 2020. A complete set of Assured Tenancy Agreements from before 2020 could not now be provided. However, Rooms Liverpool managing agent Mr Lee Rothwell went on to manage No. 208A after the responsibility was transferred to Sure Move Estates Ltd. Mr Rothwell's signed affidavit said the property had been continuously used as an HMO from 2013 to date.

10. The Council said the property had been registered as being unoccupied for Council Tax purposes since 13 July 2020. The Applicants said that was an unexplained error and that all council tax bills were paid and up to date. The property had never been unoccupied. However, the Council countered by saying that the Applicants provided no further supporting evidence to demonstrate that this was incorrect and that the correct level of Council Tax payment had been made. Indeed, a Council Tax exemption had been claimed on the ground that the property was unoccupied. The Applicants had been invited to provide further supporting evidence in response to the claim of the Council Tax exemption of June 2020 for unoccupancy. The Council said that even if this matter was resolved and any outstanding monies paid, it still could not be seen as evidence the property was occupied during the relevant period.

11. The Applicants in the present instance had to show that use of the 2 upper floors of No. 208A Smithdown Road as a 5 persons HMO had become lawful by 19 July 2022, either by having already been in continuous use as an HMO for at least 10 years before the Article 4 Direction came into force on 17 June 2021 or having been in continuous use as an HMO for at least 10 years by 19 July 2022, the date the LDC application was made and that such use continued to the extent that the Council could have taken enforcement action at any time in the relevant period, (*Thurrock BC v SSETR & Holding (COA 27.2.02, J* 1080). If the ongoing unlawful use ceased during the relevant period, the time would not count towards immunity. The "clock" would restart when the unlawful use recommenced.

12. The Council Tax/unoccupancy and the property records gaps are such that, on the evidence now before me, the C4 HMO use by 5 persons of the 1st and 2nd floors of No. 208A Smithdown Road was not sufficiently precise and unambiguous to show that on the balance of probabilities, when the application was made, the use had become lawful. A certificate of lawfulness is not issued.

FORMAL DECISION

13. For the reasons given above, I conclude that the Council's refusal to grant a lawful development certificate for the use of No. 208A Smithdown Road, Liverpool L17 3JT as a C4 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