



Appeal Decision

Site visit made on 22 October 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th October 2024

Appeal Ref: APP/Z2315/X/24/3341215

84 Westgate, Burnley, Lancashire BB11 1RY

- 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 Ramy Esmat Abdel Mottalib OF Hanok Holdings Ltd against the decision of Burnley Borough Council.
 - The application ref CEA/2024/0033, dated 17 January 2024, was refused by notice dated 20 March 2024.
 - The application was made under section 192(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 the change of use from a C3(a) residential dwelling to a C4 HMO (House of Multiple Occupation) for no more than 6 people.
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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 change of use from a C3(a) residential dwelling to a C4 HMO (House of Multiple Occupation) for no more than 6 people, which is found to be lawful.

Preliminary Matters

2. In an appeal under s195 of the Act against the refusal of a LDC, the planning merits of the matter applied for do not fall to be considered. My decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant.
3. The description of development stated on the application form refers to "internal changes and additional rooflights," but the appellant's supporting documentation confirms the proposed change of use from class C3 to C4. This description is found on the appeal form and the Council's decision notice. It is agreed and accurately reflects the development subject of this appeal, and I have considered the appeal on that basis.

Main Issue

4. I consider that the main issue is whether the Council's decision to refuse an LDC was well-founded.

Reasons

5. An application under s192(1) of the Act seeks to establish whether any use or operations proposed to be carried out in, on, over, or under land would be lawful. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
6. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission

for the classes of development described as permitted development (PD) in Schedule 2 of the Order. Part 3 of Schedule 2 relates to changes of use. Class L of Part 3 describes development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the Town and Country (Use Classes Order) 1987 (as amended) (UCO) to a use falling within Class C4 (HMO) of that Schedule.

7. The application property is a mid-terrace dwelling comprising of four floors that includes a lower ground floor and a roof space.
8. The dispute between the parties relates to the bedroom proposed in the roof space and whether it comprises a self-contained dwellinghouse with its own amenities. If this were to be the case, then it is the Council's case that the proposed use of the building would fall outside of Class C4.
9. A Class C4 HMO is defined by the UCO as the use of a dwellinghouse by not more than six residents. This is more widely understood to be small, shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.
10. Section 254 of the Housing Act 2004 (as amended) sets out the criteria to be met if a building or a part of a building is an HMO. The criteria include that it must consist of one or more units of living accommodation not consisting of a self-contained flat or flats and that two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities. "Basic amenities" are defined as a toilet, personal washing facilities, or cooking facilities.
11. There would be a communal living area and kitchen on the ground floor and a communal kitchen in the roof space. An enclosed rear yard would provide shared amenity space, bin storage and bicycle storage. The communal living area and kitchens would not be part of any of the bedrooms within the property. The communal kitchen in the roof space would be separated from bedroom 6 by fire doors to that bedroom and the kitchen, with a short communal landing in between. Hence, despite the provision of en-suite bathroom facilities for bedrooms 1, 2, and 6, the residents, of which there would not be more than six, would all share one or more basic amenities.
12. As such, for the reasons set out above, I conclude that the appellant has shown, on the balance of probability, that the proposed change of use from a C3(a) residential dwelling to a C4 HMO for no more than 6 people was PD on the date of the application having regard to Class L, Part 3 of Schedule 2 of the GPDO. Hence, the proposed use would have been lawful within the meaning of S191(2) of the Act.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the change of use from a C3(a) residential dwelling to a C4 HMO for no more than 6 people was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

Andrew McGlone

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 17 January 2024 the use 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed change of use from a C3(a) residential dwelling to a C4 HMO for no more than 6 people would have been granted planning permission by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'), having regard to the terms of Schedule 2, Part 3, Class L of the GPDO. Therefore, the proposed development would not have constituted development under section 55 of the Act for which planning permission is required.

Signed

Andrew McGlone

Inspector

Date: 24th October 2024

Reference: APP/Z2315/X/24/3341215

First Schedule

The change of use from a C3(a) residential dwelling to a C4 HMO for no more than 6 people.

Second Schedule

Land at 84 Westgate, Burnley, BB11 1RY

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

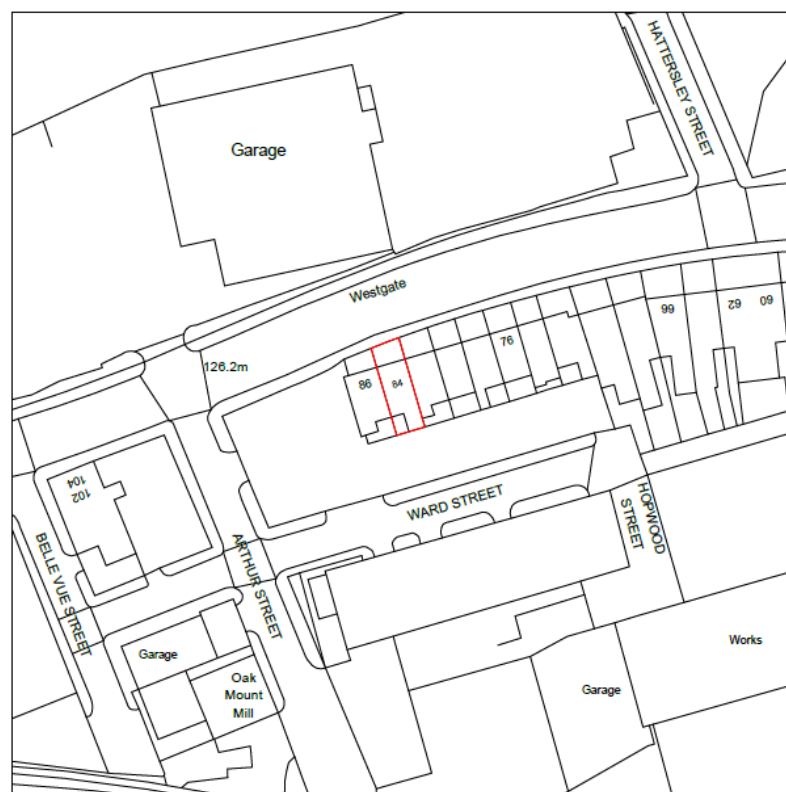
This is the plan referred to in the Lawful Development Certificate dated: 24th October 2024

by Andrew McGlone BSc MCD MRTPI

Land at: 84 Westgate, Burnley, Lancashire BB11 1RY

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Scale: Not to Scale



Block Plan
1 : 500

