



Appeal Decision

by Siobhan Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2024

Appeal Ref: APP/Z4310/X/24/3338924

42 Lidderdale Road, Liverpool, L15 3JG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Kim McGilley (Your Place Ltd).
 - The application ref 24LE/0043 is dated 10 January 2024.
 - The application was made under section 191(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 an 8-bed house in multiple occupation – sui generis.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council did not state clearly and precisely its full reasons for its decision on the “decision notice”. Without containing the information required by Article 39(13) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Council’s “determination” is defective and not valid. I have therefore treated this appeal as a non-determination. It is clear from the Officer Report that the Council considers that the evidence submitted to justify an LDC was not sufficiently precise and unambiguous.

Main Issue

3. The main issue is whether a refusal to grant an LDC would have been well-founded.

Reasons

4. Advice relating to LDCs is provided by the Government’s Planning Practice Guidance. This establishes that the applicant is responsible for providing sufficient information to support an application. In the case of applications for an existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits are not relevant.
5. Section 191(2) of the Act states that:
For the purposes of this Act uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

6. I have not been referred to any enforcement notice, so my decision hinges solely on s191(2)(a). The appellant's case is that the time for taking enforcement action had expired by the time the application for an LDC was made. The time limits are set out in s171B of the Act. The time limit for enforcement in this case is 10 years. Thus, the appellant needs to show, on the balance of probability that, prior to the LDC application, the building had been used as an 8 person HMO for a continuous period of not less than 10 years, and that the use had not subsequently been abandoned or changed.
7. The application form is dated 10th January 2024. The latest date that this use could have started is therefore 10th January 2014.
8. Evidence of students living in the house dates back to 2004/2005. This evidence is provided by Council Tax bills. However, none of the Council Tax bills shows how many occupants there were in the house.
9. The earliest submitted document that indicates 8 occupants is a rent statement dated 1 July 2014. Other rent statements that show 8 people paying rent are dated 1 October 2014, 1 February 2015 and 1 May 2015. However, the rent statements post-date 10th January 2014.
10. The oldest submitted Assured Shorthold Tenancy Agreement (ASTA) shows evidence of 8 people sharing the house starting on 1 July 2015. None of the submitted ASTAs go back as far as the 10th January 2014.
11. Furthermore, there are ASTAs covering two years that show fewer than 8 tenants. The ASTA for the period of 1 June 2016 to 30 June 2017 is signed by 6 tenants and the ASTA for the period of 2 July 2018 to 30 June 2019 is signed by 7 tenants. Even if the 6 and 7 tenants paid for the full use of the property, this does not mean that the 8-person use continued to subsist during that time. The ASTAs, therefore, do not support the use of the property as an 8-person HMO for a continuous period of 10 years.
12. The appellant has provided a HMO Licence which states that the house is suitable for occupation by 8 people. Being suitable does not necessarily mean that the house would be fully occupied by the licenced number and it only dates from 2019.
13. Overall, the tenancy agreements, rent statements, Council tax bills, and HMO licence do not demonstrate any 10-year continuous period.
14. The appellant, who is the manager of Your Place Student Lettings, has made a statutory declaration (SD). This says that the property has been continuously used by 8 people as an 8-bed HMO since 1st July 2004 apart from 2016-2017 when it was let to a group of 6 and 2018-2019 when it was let to a group of 7. The appellant states that she has managed Your Place Student Lettings for 12 years which has fully managed the property for this period of time. She says that she has visited the property numerous times over the years, which has always been in use as an 8 bed HMO.

15. However, there is nothing in the SD to explain how she would know how the property was used before she managed it, and on her own evidence, there were 2 years when it was not occupied by 8 people.
16. The onus of proof is firmly on the appellant to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate. Overall, I find that the appellant's evidence, on the balance of probabilities, does not meet this requirement. As with all LDC applications, it is open for fresh applications to be made if, for example, other evidence comes to light.

Conclusion

17. For the reasons given above I conclude that had the Council refused to grant a certificate of lawful use or development in respect of an "8 bed house in multiple occupation – sui generis" that refusal would have been well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Siobhan Watson

INSPECTOR