



Appeal Decision

by Siobhan Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal Ref: APP/Z4310/X/24/3336303

63 Alderson Road, LIVERPOOL, L15 2HL

- 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 Jordan Silverstone against the decision of Liverpool City Council.
 - The application ref 23LE/1824, dated 21 July 2023, was refused by notice dated 5 October 2023.
 - 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 "C4 Use Class HMO".
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to grant a LDC was well founded.

Reasons

3. Advice relating to LDCs is provided by the Government's Planning Practice Guidance (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. In the case of applications for 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.
4. 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.
5. I have not been referred to any enforcement notice, so my decision hinges solely on s191(2)(a).

6. An Article 4 Direction removing permitted development rights for a change of use from a C3 dwellinghouse to a C4 small house in multiple occupation (HMO), came into effect on 17th June 2021 and therefore, for the HMO to be lawful, it must have come into use before that date and there must have been no subsequent change of use.
7. In this respect, evidence of a C4 use is provided by 4 tenancy agreements relating to individual rooms at the property which, in combination, and virtually simultaneously, cover the period between 8 July 2020 to 21 January 2021. In addition, Bernice Orinthea Carter-Nwankwo has made a statutory declaration (SD), dated 19th May 2021, that she has owned the property since 4th June 2014 and that the property's Use Class is a C4 HMO.
8. Due to the submitted tenancy agreements, the occupation as a HMO is substantiated up until January 2021. Therefore, on the balance of probability, the property was lawfully used as a C4 HMO before the A4 Direction came into effect. However, my consideration does not end here because what happened after 21 January 2021 is relevant. The use must not have been lost and then reinstated after the A4 Direction came into effect.
9. I understand that the appellant purchased the property on 19 May 2021. He has provided two Assured Shorthold Tenancy Agreements for 6 tenants covering the periods from 1 July 2022 to 30 June 2023 and 1 July 2023 to 30 June 2024. James Goodwin, the owner of the house, has signed a SD, dated 11 July 2023, to say that the property has been exclusively and continuously used as a HMO since 10 May 2021.
10. Due to the tenancy agreements provided, I have no reason to doubt that the property has been occupied as a C4 HMO between 1 July 2022 to 30 July 2024. However, there are no tenancy agreements covering the period between 21 January 2021 and 1 July 2022 and no part of this gap is explained in either of the two SDs.
11. The appellant's appeal statement suggests that any gap in occupation after January 2021 may have occurred due to the sale of the property and subsequent refurbishment works. However, whilst there is no reason for me to doubt that the property changed ownership in May 2021, there is very little to substantiate any refurbishment works or the time period over which they might have been undertaken. The evidence is very ambiguous about what occurred in the property for these 18 months. I note the appellant's comments that just because an occupation of a property has ceased, the lawful use does not change. However, 18 months is a very significant period and I have no substantive evidence that the property was simply unoccupied during this time.
12. 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.

Other Matters

13. The appellant has referred to a number of appeal decisions he considers to be relevant to this appeal. All of those cases relate to different properties with different circumstances. However, I will briefly address them:

- APP/Z5060/C/16/3142252 - This was an appeal against an enforcement notice and it failed on grounds (c) and (d). Therefore, it does not help the appellant in terms of "lawfulness".
 - APP/Z4310/X/22/3292192 – This is provided by the appellant to show that an Inspector can consider additional evidence at appeal stage. As in that case, I have considered the additional evidence provided by the appellant with the current appeal.
 - APP/P4605/X/21/3268431 – This concerns physical works to the property and a lack of occupation due to Covid. The evidence submitted in that appeal was very different to the case before me. Although I have a floorplan before me, there is no detailed evidence of any physical works undertaken to the property in this appeal. Covid lockdown is not a factor in this appeal either.
 - APP/Z4310/X/23/3315708 – The appellant has provided this decision as it says "*None of the Council's own evidence explicitly confirms that the property was not in use as an HMO prior to 17 June 2021*". It is also the case in the current appeal that the Council has not provided its own evidence which explicitly confirms that the property was not in use as an HMO between 21 January 2021 and 1 July 2022. However, the burden of proof is on the appellant and in the quoted appeal case, the appellant had provided a tenancy agreement to demonstrate the use began prior to 17 June 2021.
14. The appellant has also referred to an LDC application determined by the Council, ref. 23LE/2790. This is in connection with the lack of weight the appellant considers the Council gave to the SDs in this appeal case. I have addressed the SDs above.

Conclusion

15. For the reasons given above I conclude that the Council's refusal was 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) and dismiss the appeal.

Siobhan Watson

INSPECTOR