



Appeal Decision

Site visit made on 21 August 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Appeal Ref: APP/Z4310/X/23/3331366

14 Mansell Road, Liverpool L6 6AZ

- 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 Mrs Pam Wilsdon against the decision of Liverpool City Council.
 - The application ref 22LE/2925, dated 31 October 2022, was refused by notice dated 6 March 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 – Houses in Multiple Occupation".
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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 existing use which is found to be lawful.

Preliminary Matters

2. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use subject of the application is lawful for the purposes of section 191 of the 1990 Act. A use is lawful under the provisions of section 191(2)(a) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the evidence alone is sufficiently precise and unambiguous.
3. The Council comments that further evidence has been submitted as part of the appeal that was not provided with the application. It is open to me to consider any such evidence because section 195 of the 1990 Act refers to the 'refusal' being well-founded, which means the Local Planning Authority's decision, not the reasons for the decision. I have, therefore, taken account of the further evidence.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

5. 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 17 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.

6. The appellant has provided copies of Assured Shorthold Tenancy Agreements (ASTs) which name several individual tenants for the four rooms at the property at various times from July 2018. In particular, ASTs are provided which cover at least three rooms at any given time from late June 2020 going forward. I accept that the ASTs are not categorical proof that these individuals actually occupied the property. Nevertheless, they need not be as the burden of proof is on the balance of probability, not beyond all reasonable doubt. Furthermore, the Council has not provided any evidence to suggest that the tenants did not occupy the property in accordance with the ASTs.
7. The appellant has also provided various other forms of evidence from both before and after the Article 4 Direction came into force in June 2021, which further supports the appellant's claim that the property has been in use as a Use Class C4 HMO. These include a Council tax bill showing student exemption, insurance documents, bank statements detailing various rental payments, and deposit certificates.
8. Having regard to the totality of the evidence, I am satisfied that the evidence is sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the appeal property was in use as a Use Class C4 HMO when the Article 4 Direction came into effect and remained in that use at the time the LDC application was made.

Other Matters

9. I note that a Councillor objected to the proposal and supported the rejection of the application. However, as set out above the burden of proof is on the balance of probabilities that the use was lawful at the time the LDC application was made. In addition, the planning merits of the development have no bearing on my consideration of whether or not the development was lawful.

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the existing use of the property as a house in multiple occupation for 3-6 persons (Use Class C4) was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

David Jones

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 31 October 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated that, on the balance of probabilities, the property was in use as a Use Class C4 House in Multiple Occupation on the date the Article 4 Direction came into effect and has continued up until the date of the LDC application. The use of the property as an HMO (Use Class C4) was therefore lawful at the date of the application.

Signed

David Jones

Inspector

Date: 29 October 2024

Reference: APP/Z4310/X/23/3331366

First Schedule

A house in multiple occupation for 3-6 persons (Use Class C4)

Second Schedule

Land at 14 Mansell Road, Liverpool L6 6AZ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 29 October 2024

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Land at: 14 Mansell Road, Liverpool L6 6AZ

Reference: APP/Z4310/X/23/3331366

Scale: Not to Scale

