



Appeal Decision

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 07 November 2024

Appeal Ref: APP/Z4310/X/24/3342105

21 Jubilee Drive, Liverpool L7 8SJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Robert Torrance of 'Accomod8' against the decision of Liverpool City Council.
 - The application Ref 23LE/0822, dated 30 March 2023, was refused by notice dated 12 October 2023.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which an LDC is sought is "house of multiple occupation for 3-6 persons (Use Class C4)".
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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. I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.
3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. 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 their evidence alone is sufficiently precise and unambiguous.
4. The planning merits of the use, such as parking and/or noise and disturbance as raised by an interested person, are not relevant and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
5. The application was seeking to establish that the use of the building as an HMO for up to six residents, within Class C4 of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987, was lawful at the date of the application. Section 191(2) of the 1990 Act provides that uses are lawful at any time if no enforcement action may be taken in respect of them because they did not require planning permission.

6. The appellant's case is the change of use to an HMO comprised development 'permitted' under Article 3 and Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This concerns the change of use of a building from a use falling within Class C3 (dwellinghouses) to a use falling within Class C4 (houses in multiple occupation).
7. The Council has provided a copy of a Direction made under Article 4(1) of the GPDO relating to the area in which the appeal premises is located. This has the effect of revoking 'permitted development' rights conferred by Schedule 2, Part 3, Class L(b). The Article 4 Direction was confirmed on 17 June 2021 and came into force on that date. The dispute between the parties is whether or not the change of use took place before the Article 4 Direction came into force, in which case it would have been lawful.

Main Issue

8. I must decide whether the use of the property as an HMO within Use Class C4 was lawful on the date of the application. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

Evidence

9. The appellant has submitted a sworn statement, dated 28 March 2024. This states the appeal premises has been operated/used as a small HMO since January 2018.
10. The appellant has also provided Council Tax Bills from 2020 to 2024. The 2022/23 bills show a student exemption from 1 July 2022, which is also applied in 2023/24. An email from the letting agent, dated 28 March 2024, explains that prior to July 2022 the property was let to professionals and there was no exemption.
11. There are several Assured Shorthold Tenancy Agreements (ASTs) for the property. The 2016/17 AST is not relevant as it concerns a different property that was occupied by students. The others indicate that Rooms 1 to 5 were available for occupation by individuals from 2018 to the spring of 2022. From 1 July 2022 there is a joint AST for five students for a 12 month tenancy. This was replaced by a joint AST for four students which ran for a year from 1 July 2023.
12. Remittance statements have been provided by the letting agents which show rental payments for rooms 1, 3 and 5 made for one or two month periods in 2019. There are also copies of bank statements showing regular rental payments for the property from December 2017 to 2024.
13. In addition, the Council has confirmed that the property had an HMO licence for five people dated 15 January 2018, 11 February 2019 and 18 May 2023, copies have been provided.

Analysis

14. The sworn evidence of the appellant has been duly signed and witnessed and this carries significant weight. In addition, there is supporting evidence

including ASTs and other relevant documentation that accords with the appellant's version of events.

15. The Council maintains there is insufficient proof of occupancy prior to the relevant date. This is because the evidence on which the decision was made was considered incomplete and did not show continuous occupancy. However, the appellant is not seeking to demonstrate that the breach of planning control is immune from enforcement action due to the passage of time. That would require an assessment of continuous occupancy because, during any periods of vacancy, the Council would not have been able to take enforcement action.
16. Instead, I must consider whether the change of use to an HMO occurred before the Article 4(1) Direction came into force, in which case, it would have been lawful due to permitted development rights.
17. I accept that the ASTs alone do not show that the property was used and occupied as an HMO. However, there is further evidence provided with the appeal that was not available to the Council when it made its decision. Appeals under s195 are treated as 'de novo' appeals and the parties may submit additional evidence that was not before the authority previously. This is because s195 refers to the refusal being well-founded, which is the decision, not the reasons for the decision. I have taken the additional evidence into account, therefore.
18. The combination of the sworn evidence, the ASTs, the HMO licences, and details of rental payments are sufficiently precise and unambiguous to show, on the balance of probabilities, that the building was occupied as an HMO from before the date of the Article 4(1) Direction and this continued up until the date of the application. The change of use of the building to an HMO within Class C4 of the Use Classes Order would have been permitted development by virtue of Article 3 and Schedule 2, Part 3, Class L(b) of the GPDO, and was lawful at the date of the application, therefore.

Conclusion

19. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of an HMO for 3-6 persons (Use Class C4) 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.

D Moore

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 30 March 2023 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The building was occupied as a House in Multiple Occupation from before the date of the Article 4(1) Direction (of the Town and Country Planning (General Permitted Development) (England) Order 2015). The appellant's evidence is sufficiently precise and unambiguous, and it has been shown, on the balance of probabilities, that the use of the building as an HMO was lawful at the date of the application.

Signed

D Moore

Inspector

Date: 07 November 2024

Reference: APP/Z4310/X/24/3342105

First Schedule

House of Multiple Occupation for 3-6 persons (Use Class C4).

Second Schedule

21 Jubilee Drive, Liverpool L7 8SJ

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/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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 07 November 2024

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

Land at: 21 Jubilee Drive, Liverpool L7 8SJ

Reference: APP/Z4310/X/24/3342105

Scale: NTS

