

Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 11 November 2024

Appeal Ref: APP/Z4310/X/24/3341155

51 Connaught Road, Liverpool L7 8RW

- 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 Thanasis Stavrouli against the decision of Liverpool City Council.
 - The application Ref 23LE/2494, dated 5 October 2023, was refused by notice dated 29 February 2024.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which an LDC is sought is as a house of multiple occupation (HMO) for 3-6 persons (Use Class C4).
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Decision

1. The appeal is dismissed.

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 noise and disturbance or parking, 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.
8. I note that more evidence has been provided with the appeal that was not available to the Council when it made its decision. Appeals under Section 195 are treated as 'de novo' appeals and the parties may submit additional evidence that was not before the authority previously. This is because Section 195 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.

Main Issue

9. 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

10. The documentation prior to the date of the Article 4(1) Direction comprises an incomplete Assured Shorthold Tenancy Agreement (AST) for A Lord for the period 1 August 2020 to 30 June 2021, together with a signed AST covering the same period for I Baxter who was to occupy Room 1. There is a signed AST for D Hanstock, who was allocated room 3, for the same timescale. The appellant has also submitted a Council Tax bill for 2020/21, which shows a student exemption from 1 April 2020 to 31 March 2021.
11. Evidence for the time after the Article 4(1) Direction comprises four individual ASTs for October / November / December 2021 to 2022, which are not complete. A further four individual ASTs for 3 September 2022 to 2 March 2023 have been submitted, which were all signed. These related to the occupation of rooms 1 to 4. Finally, there is a joint AST for four people from 28 July 2023 to 29 June 2024, which are complete.

Analysis

12. As set out above, the appellant has provided several ASTs for the property. Not all of these are complete, however, as they are not signed and dated. The ASTs in themselves do not provide proof of occupancy, particularly those that are incomplete. This is because the tenancy may not have been taken up, or it may have been terminated early. Similarly, the Council Tax bill does not show how the property was used and occupied during the relevant timescales.

13. Even those ASTs which are complete would normally need to be supplemented by other evidence to show occupancy prior to the date of the Article 4(1) Direction coming into force. Such evidence may include sworn statements, made under the Statutory Declarations Act 1835. Declarations that have been duly signed and witnessed would carry significant weight due to the sanctions that apply to making false statements. Other types of evidence would be utilities bills, HMO licences or records of rental payments. No such information has been submitted.
14. Overall, I find that the appellant's evidence is not 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. It has not been shown that 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. I am not satisfied that it was lawful at the date of the application, therefore.

Conclusion

15. 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 well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act.

D Moore

Inspector