



Appeal Decision

Site visit made on 21 October 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Appeal Ref: APP/Z4310/X/24/3336861

14 Birstall Road, Liverpool L6 9AH

- 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 Tanzeel Rehman against the decision of Liverpool City Council.
 - The application ref 23LE/2712, dated 31 October 2023, was refused by notice dated 15 December 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 a C4 HMO.
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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.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

3. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) and (b) 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; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. 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 his evidence alone is sufficiently precise and unambiguous.
4. A Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 applies to the area in which the appeal property is located. The Direction came into effect on the 17 June 2021 and removes the permitted development rights conferred by Schedule 2, Part 3, Class L(b), ie 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).

5. Given the above, the question is whether the use of the property materially changed to use as a C4 Use Class house in multiple occupation (HMO) after the Class L(b) permitted development rights came into force, but prior to the date on which the Article 4 Direction came into effect (17 June 2021) and therefore had the benefit of planning permission.
6. Copies of Assured Shorthold Tenancy Agreements (ASTA) have been provided for the appeal property covering the period of July 2017 to June 2024. There are small periods of time throughout this timeframe that are not covered by an ASTA; however, these generally coincide with university term times. There is not a copy of an ASTA for the period of 1 August 2022 – 30 June 2023. However, there is a document from Top Property Student Homes confirming a tenancy has been signed but it doesn't state how many tenants there were. Based on the ASTAs predating and postdating this period of time, it is reasonable to conclude that the number of tenants would have been between 2 and 6. There is nothing to suggest otherwise.
7. I acknowledge that the ASTA's are not conclusive proof that the property was occupied as an HMO during these periods. However, the burden of proof is on the balance of probabilities, ie whether it is more probable than not. The ASTAs are all signed and dated, with clearly different signatures. There is no evidence to indicate that the named tenants did not occupy the property.
8. A statutory declaration by Andrew Bennett confirms that since Gatesyde Property Limited purchased the property on 21 March 2021, and at the time of purchase, it was used as a small HMO and has been used as such ever since. The statutory declaration is signed and witnessed by a solicitor, with the solicitor's address at which it was declared being clearly visible. Therefore, regardless of whether there is a solicitor's stamp, the declaration is afforded significant weight. The ASTAs support the statutory declaration and there is no contradictory evidence before me.
9. I find therefore, the evidence is sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the use of the appeal property changed to a C4 Use Class HMO after Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 came into force, but before the Article 4 Direction came into effect. The use then continued up to the date of the LDC application.

Conclusion

10. For the reasons given above I conclude, on the evidence now available, the Council's refusal to grant a certificate of lawful development is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A Walker

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 2023 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 evidence is sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the use of the appeal property changed to use as a C4 Use Class house in multiple occupation after Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 came into force, but before the Article 4 Direction came into effect. The use then continued up to the date of the LDC application.

Signed

A Walker

Inspector

Date: 12 November 2024

Reference: APP/Z4310/X/24/3336861

First Schedule

A C4 HMO

Second Schedule

Land at 14 Birstall Road, Liverpool L6 9AH

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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: 12 November 2024

by **A Walker**

Land at: 14 Birstall Road, Liverpool L6 9AH

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Scale: Not to Scale

