



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/24/3336301

62 Granville Road, Picton, Liverpool L15 2HR

- 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/1914, dated 28 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 a C4 Use Class 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. The appellant has provided copies of Assured Shorthold Tenancy Agreements (ASTA) for the appeal property covering the periods of 1 August 2019 – 30 June 2020; 19 September 2022 – 30 June 2023; and, 1 July 2023 – 30 June 2024. For each of these periods there were between 4 and 6 individual tenants. I acknowledge that the ASTA's are not categorical 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.
7. There are no ASTAs covering the date of 17 June 2021. The appellant's explanation of this is that between June 2020 and September 2022 it was the coronavirus pandemic and therefore there were no occupants, likely due to students not attending university in person. Furthermore, extensive alterations on the property were carried out, as evidenced in the Council's Building Control records, with the completion inspection taking place on June 2022. I note the Building Control inspections only took place over a 3 month period; however, given the extent of the alterations that took place to the property, including internal alterations to provide 6 bedrooms, the re-roofing of the property and a loft conversion with a rear dormer extension and rooflights, it is likely that these works took place over a longer period of time. I find therefore, these reasons sufficiently explain the absence of an ASTA covering the period of time between June 2020 and September 2022.
8. The statutory declaration of Jonathon Matthew Benedict, dated 14 December 2021, states 'This property has been exclusively and continuously used as a use of[sic] Class 4 (HMO) or sui generis (HMO)...since June 2014'. Class C4 HMOs and sui generis HMOs are different use classes and the material change of use from one to the other would require planning permission. There is no indication in the declaration of when the property was in use as a Class C4 use HMO or a sui generis HMO. However, based on the August 2019 - June 2020 ASTA and the explanation for the subsequent period of vacancy of the property, it is reasonable to conclude that the sui generis HMO use occurred before August 2019 and there is no evidence of that use reoccurring following that date up until the date of the LDC application.
9. Overall, the August 2019 - June 2020 ASTA indicates the property was in use as a Class C4 use HMO at that time and there is no evidence to suggest the use materially changed or was abandoned between June 2020 and September 2022. Therefore, whilst the property may not have been occupied on 17 June 2021, based on the evidence before me, on the balance of probabilities, the use of the property at the time the Article 4 Direction came into effect was a Class C4 use HMO. The ASTAs covering the period of September 2022 to June 2024 indicate that the property was continuously in use as a Class C4 use HMO up until the date of the LDC application.

10. 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 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.

Conclusion

11. For the reasons given above, I conclude that 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 28 July 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 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 Class C4 use 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/24/3336301

First Schedule

A C4 Use Class HMO

Second Schedule

62 Granville Road, Picton, Liverpool L15 2HR

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: 62 Granville Road, Picton, Liverpool L15 2HR

Reference: APP/Z4310/X/24/3336301

Scale: Not to Scale

