



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/23/3336158

27 Granville Road, Picton, Liverpool L15 2HP

- 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/2727, dated 31 October 2023, was refused by notice dated 6 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. The appellant has provided copies of Assured Shorthold Tenancy Agreements (ASTA) for the appeal property covering the periods of 14 September 2020 – 18 July 2021; 26 July 2021 – 11 July 2022; and, 25 July – 16 July 2023. For each of these periods there were four 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, dated and witnessed, all with clearly different signatures. There is no evidence to indicate that the named tenants did not occupy the property.
7. In addition, the appellant has provided two statutory declarations from the previous owner of the property, Gary Austin, confirming the property had always been in use as a small HMO during their ownership between March 2017 and October 2023.
8. Council Tax bills have been provided for 2017-2018, 2021-2022 and 2022-2023. Although they show no evidence that there was any exemption due to its occupation by students, that is not to say the property was not occupied as an HMO. It simply means an exemption was not sought.
9. The Council state their Private Sector Housing team confirm there is no evidence of a current license for the property to be used as an HMO. However, there is no evidence before me to indicate that a license is required for a 4 person HMO. The Council also state the ASTAs only show an intention to let the property and do not provide evidence of actual occupation, unlike utility bills. However, utility bills would only indicate that the property has been occupied. They would not necessarily show that it has been occupied as an HMO. There is no dispute that the property has been in residential occupation in some form or another, albeit with a period of vacancy whilst works have been carried out. Therefore, even if utility bills were submitted, it is unlikely they would prove anything more than what is undisputed, ie that the property has been in residential occupation.
10. The Council rely on comments from four neighbours. The nature of how these neighbours contacted the Council is not clear as I have not been presented with any copies of such representations. The comments they made that the Council refer to provide little context of how they are familiar with the occupants/previous occupants of the property. Accordingly, I attribute these representations very limited weight.
11. I have also had regard to the two representations from neighbours submitted as part of the appeal process. Both of these representations relate to the same neighbour. I note their contention that 'as far as I am aware, the property was never a HMO'. However, there is no evidence in support of this or context to how they know the occupation status of the property. In addition, the reference to 'as far as I am aware' introduces an element of doubt to their statement.
12. I note that the property has undergone extensive alterations. However, this in no way indicates that its use was abandoned due to these works. With regard

to concerns regarding the number of HMOs in the area, this has had no bearing on my consideration of whether the use is lawful.

13. Given the above, whilst neighbouring residents contradict the appellant's case, their evidence is anecdotal and does not outweigh the greater weight that I attribute to the statutory declaration and the ASTAs.
14. I find therefore, 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

15. 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 31 October 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 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/23/3336158

First Schedule

A C4 HMO

Second Schedule

27 Granville Road, Picton, Liverpool L15 2HP

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

27 Granville Road, Picton, Liverpool L15 2HP

Reference: APP/Z4310/X/23/3336158

Scale: Not to Scale

