



Appeal Decision

Site visit made on 21 October 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2024

Appeal Ref: APP/Z4310/X/23/3332886

41 Claremont Road, Liverpool L15 3HH

- 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/2297, dated 12 September 2023, was refused by notice dated 24 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 small HMO.
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Decision

1. The appeal is dismissed.

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 Town and Country Planning Act 1990 (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 force on the 19 July 2018 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 force (19 July 2018) and therefore had the benefit of planning permission.

6. The appellant has provided tenancy agreements for 2020/2021 and 2021/2022. However, these postdate 19 July 2018 and therefore do not indicate what the use of the property was on the date the Article 4 Direction came into force.
7. Council Tax bills have also been provided for 2020-2023, which state the property is 'Exempt N Students In Occupation'. However, these bills also postdate 19 July 2018.
8. A statutory declaration from Alistair Ghashghai (previous owner of the appeal property) states the property was rented out to 3/4 students continuously since 1998 and was sold to the current owners in July 2020. They also confirm no old tenancy agreements for the period of their ownership exist anymore as they were destroyed following the change in ownership.
9. Whilst I acknowledge the loss of previous tenancy agreements, the onus still remains on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. Given the property is alleged to have been in use as an HMO since 1998, it seems highly unusual that there is no documented evidence to support Alistair Ghashghai's statement. Other forms of evidence could indicate the use of the property before 19 July 2018, for example Council Tax bills, utility bills, rental payment statements and statutory declarations from previous tenants. No such evidence has been presented.
10. Accordingly, the lack of any evidence to support Alistair Ghashghai's declaration, when over a period of approximately 20 years it is reasonable to consider that some evidence would be available, raises a significant degree of ambiguity.
11. I find therefore, the evidence before me is not sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, the use of the appeal property materially changed from a C3 Use Class dwelling to a C4 Use Class HMO prior to 19 July 2018. As planning permission has not been granted for the use of the appeal property for a C4 Use Class HMO at the time the LDC application was made, the use is unlawful.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A Walker

INSPECTOR