



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 14 November 2024

Appeal Ref: APP/Z4310/X/24/3337777

54 Adelaide Road, Liverpool L7 8SQ

- 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 Alexander Riddick against the decision of Liverpool City Council.
 - The application Ref 23LE/2230, dated 7 September 2023, was refused by notice dated 18 October 2023.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a certificate of lawful use or development 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 allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

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, the effect on the local community 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 that 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 (HMOs).
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(1) 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 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. I note that this accords with the stance taken by the Inspector in a similar appeal that has been referred to by the appellant¹.

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 is well-founded.

Reasons

Evidence

10. The appellant's evidence includes a Statutory Declaration dated 9 January 2024.
11. There are also Joint Tenancy Agreements to let the property to three individuals. These are for the following periods: from 1 July 2020 to 30 June 2021; from 1 July 2021 to 30 June 2022; and from 1 July 2022 to 30 June 2023.
12. There is a page from a water bill dating from 1 April 2020 to 31 March 2021, a copy of the first page of a contract with conditions of sale, a Council Tax bill showing a student exemption from 1 April 2020 to 31 March 2021, and another Council Tax bill showing an unspecified exemption extending from 1 April 2003 to 31 March 2004.

Analysis

13. The appellant's Statutory Declaration has been duly signed and witnessed. The sworn evidence carries significant weight due to the sanctions that apply to making false statements. This states that the appeal property has been exclusively and continuously used as a C4 Use Class HMO for 3-6 occupiers since 2003.

¹ Appeal Ref APP/Z4310/X/22/3292192 dated 17 November 2022.

14. The other evidence shows that there were contracts in place to let the premises as a three-bed property for occupation by three individuals between 1 July 2020 to 30 June 2023. One of the Tenancy Agreements dates from before the Article 4(1) Direction came into force on 17 June 2021.
15. The water bill indicates that the property was occupied between April 2020 and March 2021, as it implies usage. The Council Tax bill shows there was a student exemption applied to the property during the same timescale.
16. The evidence is finely balanced. There are no records of rental payments, which would confirm that the property was fully occupied during the relevant period, and no other supporting information such as HMO licences or gas safety certificates. However, the sworn evidence is precise in terms of the nature of the occupation during the relevant timescales. Moreover, I have not been provided with any evidence to the contrary.
17. Overall, I find that the combination of the Statutory Declaration, plus the supporting evidence, is sufficiently precise and unambiguous to reach a finding, on the balance of probabilities, that the change of use to an HMO within Class C4 of the Use Classes Order took place before the Article 4(1) Direction came into force. There is no evidence of any other subsequent changes of use. The use would have been lawful at the date of the application, therefore.

Conclusion

18. 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) is not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

D Moore

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 7 September 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 combination of the Statutory Declaration, plus the supporting evidence, is sufficiently precise and unambiguous to reach a finding, on the balance of probabilities, that the change of use to an HMO within Class C4 of the Town and Country Planning (Use Classes) Order 1987 took place before the Article 4(1) Direction came into force. There is no evidence of any other subsequent changes of use. The use would have been lawful at the date of the application, therefore.

Signed

D Moore

Inspector

Date: 14 November 2024

Reference: APP/Z4310/X/24/3337777

First Schedule

A House of Multiple Occupation for 3-6 persons (Use Class C4 of the Town and Country Planning (Use Classes) Order 1987).

Second Schedule

Land at 54 Adelaide Road, Liverpool L7 8SQ

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful on the certified date and, thus, was 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: 14 November 2024

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

Land at: 54 Adelaide Road, Liverpool L7 8SQ

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Scale: NTS

