Appeal Decision

Site visit made on 12 November 2024

by A Walker

an Inspector appointed by the Secretary of State

Decision date: 25 November 2024

Appeal Ref: APP/Z4310/X/24/3341405
132 Lawrence Road, Liverpool L15 0EQ

- 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 Mrs Kim McGilley on behalf of Your Place Ltd against the decision of Liverpool City Council.
- The application ref 24LE/0061, dated 11 January 2024, was refused by notice dated 28 February 2024.
- 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 7 Bed HMO - Sui Generis.

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. Given the above, for the use to be lawful through the passage of time, it must be established that the use of the appeal property materially changed to a use for a 7-person house in multiple occupation (HMO) 10 years prior to the date of the LDC application, namely 11 January 2014, and the use then continued for at least 10 years thereafter, without significant interruption.

5. The Town and Country Planning (Use Classes) Order 1987 (the UCO) defines a Class C4 House in Multiple Occupation (HMO) as a use of a dwellinghouse by

not more than six residents as a house in multiple occupation. Therefore, an HMO in occupation by more than six residents would be sui generis.

6. The Assured Shorthold Tenancy Agreements (ASTAs) indicate the appeal property has been occupied as an HMO since between 17 January 2013 and 30 June 2024. Although this covers a 10 year period, between 10 August 2021 to 30 June 2022 it was occupied by only 5 tenants. During its occupation by 5 tenants, its use would have been a Class C4 use HMO, not a sui generis HMO. There is no argument there was not a material change between the two uses.

7. Given the above, the material change of use of the appeal property from a sui generis HMO (7 persons) to a Class C4 use HMO (5 persons) in August 2021 amounted to a significant interruption to the alleged continued use of the property as a sui generis HMO. Although the property may have been brought back into use as a sui generis HMO in July 2022, this would have restarted the clock for the period of immunity, rather than be considered as a continuation of the previous breach of planning control when it was in use as a sui generis HMO up until August 2021.

8. Council Tax bills from 2004 to 2024 confirm the appeal property was exempt from Council tax during this period due to it having students in occupation. However, this does not indicate how many students were in occupation of the property.

9. I have had regard to the appellant's assertion that the covid pandemic was taking place during the time it was occupied by 5 tenants. Be that as it may, the property was nevertheless being occupied as a Class C4 use HMO for a period of almost a year. The covid pandemic does not waive the fact that there was a material change of use from a sui generis HMO to a Class C4 use HMO. In defining a Class C4 use, the UCO refers to the number of residents, not the number of bedrooms. Thus, the same must be for a larger HMO. Whether there are more bedrooms than there are tenants, which was the case during the property's occupation by 5 tenants, this is irrelevant in defining the use of the property.

10. The HMO licenses dating back to 2010 only indicate what the property is permitted to be used for under the Housing Act 2004. Crucially, they do not indicate how many people actually occupied the property, which in this case the appellant admits was 5 tenants between August 2021 and June 2022, despite the HMO license allowing up to 7 people.

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 to a 7 person HMO 10 years prior to 11 January 2024 and the use then continued for at least 10 years thereafter, without significant interruption. As planning permission has not been granted for the use of the appeal property for a 7 person 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