

Appeal Decision

Site visit made on 21 November 2024

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 27th November 2024

APP/Z4310/X/24/3339688

44 Alderson Road, Liverpool L15 2HL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal by Liverpool City Council to grant a certificate of lawful use or development.
- The appeal was made by SGL Group Ltd.
- The application, reference 23LE/2792 dated 8 November 2023, was refused by a notice issued on 8 February 2024.
- The Application for a Certificate of Existing Lawful Development was made under section 191(1)(a) of the Act for use of No. 44 Alderson Road, Liverpool L15 2HL as a House of Multiple Occupation for 3-6 persons (Use Class C4).

Summary of decision: The appeal is allowed and a certificate of lawful use is issued, in the terms set out below in the Formal Decision.

Costs application

1. The Appellants, SGL Ltd, applied for an award of costs against Liverpool City Council. That application is considered in a separate decision.

Appeal property

2. The appeal property is a 2 storey residential property within a short terrace in the Wavertree Area of Liverpool. The Council said it is located in the Primarily Residential Area within the Liverpool Local Plan.

House in Multiple Occupation (HMO) - Article 4 Direction

3. From 1 October 2010 a change of use from a single family dwelling (C3) use to use as a House in Multiple Occupation (HMO) (C4) does not require planning permission, (Communities and Local Government Circular 08/2010). That amendment to the Town and Country (Use Classes) Order 1987 was set out at Schedule 2, Part 3, Class L of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However, Liverpool City Council in an Article 4 direction that came into force on 17 June 2021, covering the area including the appeal property, removed that permitted development right for a conversion from a C3 dwellinghouse to a C4 small HMO.
4. The Council accepted dwellings that were lawful 3 – 6 person HMOs before 17 June 2021 are not be caught by the Direction.

Council's case

5. The Council pointed to a 29 August 2023 application for Certificate of Existing Lawful Development for use of No. 44 as an HMO, (ref: 23LE/2157). That earlier initial application was refused, the City Council Revenues department apparently confirming the property was empty from 17 June 2019 to 30 June 2022.
6. The Council said in the present case, the Applicants needed to show that No. 44 Alderson Road was already in a lawful C4 use at the time of the coming into effect of the Article 4 direction. Their reason to refuse to issue a certificate of lawfulness said: *"This certificate ... 2. It certifies that the use specified overleaf taking place on the land described was not lawful, on the specified date and, thus, was liable to enforcement action under section 172 of the 1990 Act on that date."*
7. The Applicant provided copies of Assured Short Term Tenancy Agreements covering the periods 1 July 2020 to 30 June 2021; 1 July 2012 to 30 June 2022 and 1 July 2022 to 30 June 2023. All the agreements were signed and dated by 4 named tenants. A spreadsheet document confirmed proof of deposit and rent payment from 4 tenants for the periods of the tenancy agreements.
8. The crucial period was that up to 17 June 2021, when the Article 4 Direction came into effect. It was clear that any existing dwellings that were lawful HMOs prior to that date would not be caught by the Direction and could therefore have between 3 and 6 living in and sharing the property. The Assured Short Term Tenancy agreement covering the period between 1 July 2020 and 30 June 2021 shows that a signed tenancy agreement was in place on 17 June 2021 when the Article 4 direction was enacted. The evidence also pointed to student occupation, with the tenancy agreements providing details of student ID numbers and courses for each tenant.
9. Although the Council's Revenues Service had not commented upon the current application, the refusal of application 23LE/2157 based on their indication that the property was empty from 17 June 2019 until 30 June 2022 was still a material consideration.
10. The Council said the burden was on the Applicant to demonstrate that, on the balance of probabilities, the property was occupied as a lawful HMO at the time of the application.
11. Two neighbour objections had been received. They said the property was previously a family home and was empty at the time the Article 4 Direction became effective.
12. The Applicant's evidence pointed to student occupation. However, no further evidence was provided, either in the form of Council Tax Bills for the crucial period stating that the property was student exempt or any other information than the claim that the occupiers may have simply failed to submit the Council Tax student exemption forms to the Council.
13. The relevant test of the evidence on matters such as a Lawful Development Certificate application was the balance of probabilities. Given the Council's

own counter evidence and objections from nearby residents, which made the Applicant's version of events less probable, it was considered the submitted information was not sufficient and not convincing enough to demonstrate beyond reasonable doubt that the property had been in continuous use as a 3-6 bedroom HMO before 17 June 2021.

Inspector considerations

14. S.191(1) of the Act provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; they may make an application for the purpose to the Local Planning Authority. Where that application is refused and an appeal against that decision is made, the burden of proof to show that the decision was not well founded lies with the appellant.
15. The purpose of the LDC provisions is to enable the making of an objective decision based on the best facts and evidence available when the decision is taken. Evidence should not be rejected simply because it is uncorroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted, (*Gabbitas v SSE & Newham BC [1985]* JPL 630, also see *Ravensdale Ltd v SSCLG, and Para 006 NPPF - Planning practice guidance*).
16. It necessary for the Applicant to show that No. 44 Alderson Road was in a lawful C4 use at the time of the coming into effect of the Article 4 direction by 17 June 2021, the date of the Article 4 Direction and had continued without reversion to a single residential dwelling or other change of use up to the date of the s.191 application, 8 November 2023.
17. The Assured Short Term Tenancy Agreement for the period 1 July 2020 to 30 June 2021 is significant. It shows the address as 44 Alderson Road L15 2HL. It was signed by 4 prospective student tenants also showing details of their student IDs and course descriptions and signed by Landlord Simon Lawrence for the period commencing 01/07/20 ending 30/06/21. Although the agreement itself is undated, the start of the letting period predates the Article 4 direction start date of 17 June 2021. I consider it reasonable to accept, on the balance of probabilities, that this agreement as having been made and that the co-signing tenants did occupy No. 44 as agreed in the period set out. That being so, the use of No. 44 as a 3 – 6 persons HMO would have become lawful by 17 June 2021, even if the change of use from use as a single residential dwelling to an HMO use had not become lawful before that date.
18. Tenancy agreements made subsequent to that for 01/07/20 to 30/06/21 for the periods 01/07/21 to 30/06/22 and 01/07/22 to 30/06/23 indicate that no reversion to use of No. 44 to a single residential dwelling or to a nil use occurred.
19. The evidence a lawful use of No. 44 Alderson Road as a House of Multiple Occupation for 3-6 persons (Use Class C4) was sufficient for me to issue a certificate of lawfulness.

20. National Planning Policy Guidance requires evidence to be precise and unambiguous. In the present instance the evidence provided does meet these criteria and the evidence for existing use is considered to satisfy the provisions of Section 191(2)(a) read with Section 171B(3) of the Act.

FORMAL DECISION

21. For the reasons given above, I conclude the Council's refusal to grant a certificate of lawful development for the use of No. 44 Alderson Road, Liverpool L15 2HL as a House in Multiple Occupation for 3-6 persons (Use Class C4) was not well founded and that the appeal should succeed. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as are the plans as submitted with the application.

John Whalley

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 (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 19 July 2023 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, was lawful within the meaning of section 191(1)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use of the property from a C3 dwelling use to a C4 HMO use was permitted by the General Permitted Development Order Amendment from 1 October 2010.

John Whalley

INSPECTOR

Date: 27th November 2024

Reference: APP/Z4310/X/24/3339688

First Schedule

Use of the property as a House of Multiple Occupation for 3-6 persons, (Use Class C4).

Second Schedule

No. 44 Alderson Road, Liverpool L15 2HL

IMPORTANT NOTES OVERLEAF
NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule was lawful on the certified date and thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 191(6) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Lawful Development Certificate Plan

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