

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/24/3340534

1 Seaman Road, Liverpool L15 3HZ

- 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 the deemed refusal by Liverpool City Council to grant a certificate of lawful use or development.
- The appeal was made by Tanzeel Rehman.
- The application, reference 23LE/1820, was dated 19 July 2023. The application was validated by Liverpool City Council. They had stated the target for dealing with the application was to be 13 September 2023. However, the Council failed to determine the application.
- The Application for a Certificate of Existing Lawful Development was made under section 191(1)(a) of the Act for use of No. 1 Seaman Road, Liverpool L15 3HZ 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.

Appeal property

1. The appeal property, No. 1 Seaman Road, Liverpool, is a 2 storey end of terrace dwelling in a short street of similar properties.
2. The application plan and elevations drawing shows a lounge, bedroom and a kitchen on the ground floor with 2 bedrooms and a bathroom on the first floor.
3. A proposed layout drawing of No. 1 shows a bedroom, a bathroom and a combined lounge/kitchen on the ground floor. The first floor would have 3 bedrooms and a bathroom, a new second floor in the roof would have 2 en-suite bedrooms. As I saw during my site inspection, the improvement and extension works had been implemented and the accommodation occupied by tenants. However, those works are unrelated to the matters before me in this appeal.

Application

4. The Town and Country Planning (Use Classes) Order 1987 put uses of land and buildings into various categories known as 'Use Classes'. Class C4 – Houses in multiple occupation – are small shared houses occupied by between 3 and 6 unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.

5. The application for a certificate of existing lawful use asserted that the property, No. 1 Seaman Road had been in consistent use as a C4 HMO since at least 14/05/2004.
6. Liverpool City Council failed to determine the application.

Considerations

7. The Town and Country Planning (Use Classes) (Amendment)(England) Order 2010 introduced a new Use Class (houses in multiple occupation, Use Class C4) - Article 2(4). It covered use of a dwellinghouse as a house in multiple occupation as defined in s.254 of the Housing Act 2004. A dwelling that falls within Use Class C4 is a small shared house occupied by between 3 and 6 unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. From 1 October 2010 a change of use from a dwelling (C3) use to use as a House in Multiple Occupation (HMO) (C4) does not require planning permission.
8. However, a Liverpool City Council Article 4 Direction came into force on 17 June 2021 in the area covering the application site address, removing permitted development rights for conversion from a Use Class C3 dwellinghouse to a Use Class C4 small HMO. Dwellings that were lawful 3 – 6 person HMOs before 17 June 2021 would not be caught by the Direction.
9. 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 or deemed to have been refused and an appeal made, the burden of proof to show that the decision was not well founded lies with the appellant.
10. In the present instance, it was necessary for the Applicant to show that use of No. 1 Seaman Road as a C4 HMO had taken place and had become lawful by 17 June 2021, the date of coming into effect 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, 19 July 2023.
11. The previous owner of No. 1 Seaman Road submitted a Statutory Declaration signed and dated 12 June 2023 stating he had owned the property since 14 May 2004 and that it had only been used as a small HMO with no other use and was currently, (12 June 2023, date of the Declaration), used as a small HMO. Assured shorthold tenancy agreements for dates between 2020 and 2024 were also submitted in support of the application.
12. The most significant tenancy agreement in relation to this appeal is that dated 6 August 2020 for the occupation of 1 Seaman Road, Wavertree, Liverpool by 3 named tenants in the period 11 August 2020 to 31 August 2021. The authenticity of this agreement was not challenged by the Council. The occupation of No. 1 Seaman Road by the 3 tenants would have been lawful by virtue of the provisions of the changes to the Use Classes Order whereby from 1 October 2010 a change of use from a dwelling (C3) use to use as a House in Multiple Occupation (HMO) (C4) use did not require planning permission. That lawfulness would not have been lost by the coming into effect of the Council's Article 4 Direction on 17 June

2021 as that would have applied only to proposals to change the use of a C3 dwelling to a use as a C4 HMO. It would not cause the loss of then existing lawful rights. The subsequent assured shorthold tenancy agreements for periods between 2020 and 2024 would appear to show that there had not been a reversion to a C3 dwelling use up to the date of the lawful certificate application date, 19 July 2023.

13. I consider that the evidence a lawful use of No. 1 Seaman Road as a House of Multiple Occupation for 3-6 persons (Use Class C4) was sufficient for me to issue a certificate of lawfulness. The evidence provided satisfies the provisions of Section 191(2)(a) read with Section 171B(3) of the Act.

FORMAL DECISION

14. For the reasons given above, I conclude that had the Council refused to grant a certificate of lawful development for the use of No. 1 Seaman Road, Liverpool L15 3HZ as a house in multiple occupation for 3 to 6 persons, (Use Class C4), that refusal would not have been 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 is the plan 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 October 2010.

John Whalley

INSPECTOR

Date: 27th November 2024

Reference: APP/Z4310/X/24/3340534

First Schedule

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

Second Schedule

No. 1 Seaman Road, Liverpool L15 3HZ.

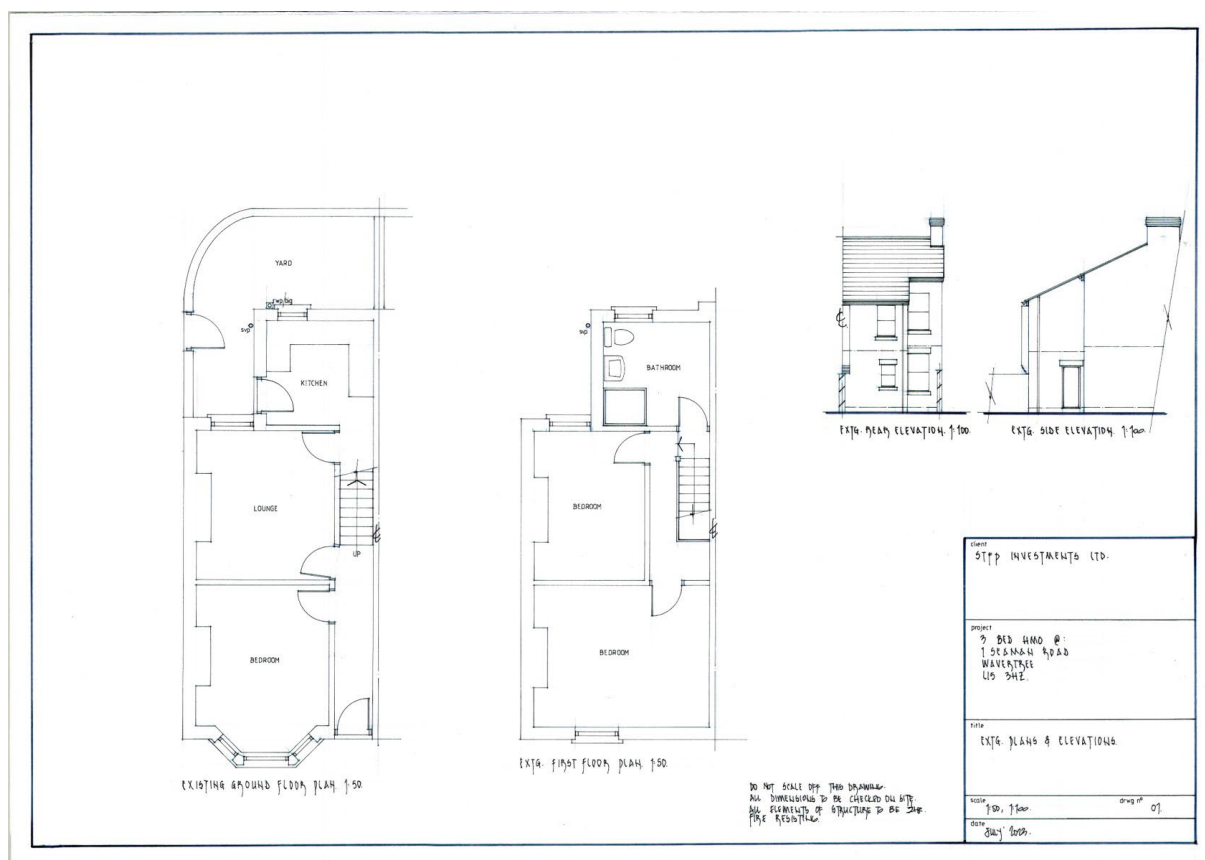
IMPORTANT NOTES OVERLEAF
NOTES

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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No. 1 Seaman Road, Liverpool L15 3HZ



Plan attached to the Lawful Development Certificate – No scale

John Whalley

INSPECTOR