

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/24/3337367

127-129 Breck Road, Liverpool L4 2QZ

- 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 Mr Stephen Thornhill.
- The application, reference 23LE/1008, was dated and validated on 31 May 2023. It was refused by a notice dated 15 September 2023.
- The Application for a Certificate of Existing Lawful Development for HMO for 7 persons was made under section 191(1)(a) of the Act in respect of Nos. 127-129 Breck Road, Liverpool L4 2QZ.

Summary of decision: The appeal is not allowed. A certificate of lawful use or development is not issued.

Appeal property

1. The appeal property comprises the first and second floors of the 3 storey Nos. 127-129 Breck Road. At the time of the site visit, the ground floor of the property was in use for retail sales purposes. Access is from the side of the property in Newcombe Street. There is an adjoining access to 127a Breck Road from Newcombe Street.

Application

2. This was an application for a Certificate of Existing Lawful Development for use of the appeal property as a large house in multiple occupation, (HMO) for 7 persons made under section 191(1)(a) of the Act in respect of Nos. 127-129 Breck Road, Liverpool. (*A home is a large HMO if at least 5 tenants live there, forming more than 1 household and they share toilet, bathroom or kitchen facilities with other tenants – a large HMO is a sui generis use – a use of its own kind*).

Late representations

3. The Council's reason for refusing to issue a certificate of lawfulness was based upon the evidence submitted with the application. After the Council's decision, further tenancy agreement details were sent in by the Applicant, Mr Thornhill. The Council queried whether information submitted after the decision had been made could reasonably be taken into consideration by the appeal decision maker.
4. S.195(1) of the Act provides that an appeal may be made to the Secretary of State where an application under s.191 or s.192 is refused or refused in

part – where the Local Planning Authority, (LPA), makes a split decision under s.193(4) – or the LPA do not give notice of their decision within the prescribed period. S.195(2) and (3) provide that, on appeal, the Secretary of State shall grant a certificate of lawfulness if the LPA's [deemed] refusal is not or would not have been 'well-founded' and the Secretary of State shall dismiss the appeal if the [deemed] refusal is or would have been well-founded.

5. The wording of s.193(2) and (3) might imply that s.195 appeals are strictly limited to a review of the authority's decision. However, they are invariably treated as de novo appeals - the parties and interested persons may submit additional evidence to the Secretary of State which was not before the authority at the time of its decision. It is appropriate that I take account of the Applicant's evidence that followed the Council's decision and go ahead to a decision, the Council having responded to the new evidence and there having been being no 3rd party evidence or comments made.

Considerations

6. 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.
7. The Applicant, Mr Thornhill, said the appeal property had been occupied as an HMO and retail shop for 20 years. The original planning application was to convert the first and second floors into 11 bedsits, roof over the rear yard of No. 129 Breck Road to form storage area for shop, erect enclosed staircase extension to rear of No. 131 Breck Road and install a new shop front to Nos. 129 – 131. The application was approved in 1998, (ref: 98P/0202).
8. Mr Thornhill said the property had been used as an HMO since the grant of the 1998 98P/0202 planning permission. There had been different occupants over the years. The Council, correctly in my view, said the 1998 permission did not grant permission for a 7 person HMO at the appeal address of Nos. 127-129 Breck Road. Neither did it confirm that a material change of use to a sui generis HMO occurred and was therefore lawful.
9. In support of this LDC application, Mr Thornhill attached details of relevant licencing for the HMO for a number of years, including a number put in following refusal of the LDC application. I do not set them out here, but note that as the Council said they do not show a 10 years' continuous occupancy of the application property as a 7 person HMO back from the date of validation of the application on 31 May 2023.
10. It was necessary for the Applicant to produce information to show that use of Nos. 127-129 Breck Road as a 7 person HMO for a 10 year period of up to or before 31 May 2023 had taken place and that such use continued to the extent that the Council could have taken enforcement action at any time

in that period, (the Court of Appeal decision in the case of *Thurrock BC v SSETR & Holding* (COA 27.2.02, J 1080 is authority for that position).

11. National Planning Policy Guidance requires evidence in these matters to be precise and unambiguous. I consider that in the present instance the evidence provided falls well short of meeting those criteria. The evidence for an existing use is not considered to satisfy the provisions of Section 191(2)(a) read with Section 171B(3) of the Act. That is because, although a considerable number of copies of tenancy agreements and HMO licences were put in, there were significant gaps and inapplicable details, in the numbers of occupants, the type of accommodation and the addresses of the property or parts of the property in the period 31 May 2013 to 31 May 2023 or the duration of agreements. Many of the tenancy agreements related to a different property, Nos. 133A Breck Road; to Nos. 127 – 139 and Nos. 133 – 135 Breck Road. Most described the accommodation being let as flats. On the evidence supplied at the time of application and subsequent, no coherent or persuasive case was made to show that use of Nos. 127-129 Breck Road as a large house in multiple occupation, (HMO) for 7 persons was lawful.
12. Mr Thornhill understandably wishes to continue his HMO business use of the appeal premises. However, most of his argument against the Council's decision to refuse to issue a certificate of lawfulness set out his views on the planning merits of continuing the use of the property as a house in multiple occupancy. They are matters not relevant to an application for a certificate of lawfulness.
13. The failure of this application does not preclude a further application if clear, specific and relevant evidence of the use of Nos. 127-129 Breck Road can be assembled and provided.

FORMAL DECISION

14. For the reasons given above, I conclude that the Council's refusal to grant a lawful development certificate for the use of Nos. 127-129 Breck Road as a Sui Generis 7 person HMO was well founded and that the appeal should fail. I exercise accordingly the powers transferred to me by s.195(3) of the Act.

John Whalley

INSPECTOR