



Appeal Decision

Site visit made on 12 November 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2024

Appeal Ref: APP/Z4310/X/24/3344619

53 Portman Road, Liverpool L15 2HH

- 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 Dr Khaled Hadi against the decision of Liverpool City Council.
 - The application ref 23LE/2649, dated 23 October 2023, was refused by notice dated 20 March 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 3 bedroom HMO.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. 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. It makes no reference to the number of bedrooms. Based on the evidence submitted, the application in fact seeks an LDC for a C4 Use Class HMO. I have determined the appeal on this basis.

Main Issue

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. A Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 applies to the area in which the appeal property is located. The Direction came into force on the 17 June 2021 and removes the permitted development rights conferred by Schedule 2, Part 3, Class L(b), ie the change of use of a building from a use

falling within Class C3(dwellinghouses) to a use falling within Class C4(houses in multiple occupation).

5. Given the above, the question is whether the use of the property materially changed to use as a C4 Use Class house in multiple occupation (HMO) after the Class L(b) permitted development rights came into force, but prior to the date on which the Article 4 Direction came into effect (17 June 2021) and therefore had the benefit of planning permission.
6. Reference is made to an Assured Shorthold Tenancy Agreements (ASTAs) covering the period of 15 June 2021-14 June 2022, which covers 17 June 2021. Whilst this in itself does not prove the actual occupation of the dwelling, it is suggestive that it was occupied. However, there was a previous planning application to convert the property to a 7 bedroom HMO¹. The Council failed to determine the application within the required time and an appeal was lodged². The appeal was dismissed.
7. The appellant states they were not the applicant for this previous application and it had nothing to do with them. In their determination of the appeal, the Inspector carried out a site visit on 20 July 2021 shortly after the Article 4 Direction came into force. Although it is not known if the Inspector viewed inside the property, they found there was no evidence to suggest the property was used as an HMO. Had the visit been carried out unaccompanied by the Inspector and the property only viewed from the street, it is possible that it would be difficult to see any external evidence of an HMO during a brief visit to a property. Therefore, it is reasonable to conclude that the property may have been in use as an HMO at the time the Inspector carried out their site visit, if they did not view it internally. Nevertheless, given the planning application submissions stated the property was not in use as an HMO at the time, it is likely the Inspector was not looking for it to be in use as an HMO. Their findings simply equated with what the use was stated to be at the time.
8. Notwithstanding this, the previous Inspector's findings contradict the appellant's contention that it has been in use as a C4 Use Class HMO since 15 June 2021. This raises a significant degree of ambiguity. The Council has suggested to the appellant to provide further evidence to support their case, including affidavits from the tenants in 2021-2022 and one from themselves. In the email correspondence between the Council and the appellant, the appellant states they have statements from two of the three previous tenants but were struggling to get one from the third. However, I have no such evidence before me of any affidavits.
9. I acknowledge that utility bills are included in the rent for the property and therefore would not indicate the use of the property as an HMO. Moreover, as the selective license scheme did not come into effect until April 2022, one was not necessary for a small HMO on 17 June 2021. The absence of one does not mean the property was not used as an HMO.
10. I also note the comments received from a local resident. However, there is no explanation as to how they have an intimate knowledge of the appeal property to the extent that they would know how many occupants it would have or who they were.

¹ Council Reference: 20F/2574

² Appeal Reference: APP/Z4310/W/21/3266458

11. Overall, there is limited evidence before me to suggest the property was in use as a C4 Use Class HMO on 17 June 2021. Furthermore, what little evidence there is conflicts with the findings of a previous Inspector, which raises a significant degree of ambiguity. I find therefore, on the evidence before me, on the balance of probabilities, it has not been demonstrated that the use of the appeal property materially changed from a C3 Use Class dwelling to a C4 Use Class HMO prior to 17 June 2021. As planning permission has not been granted for the use of the appeal property for a C4 Use Class HMO at the time the LDC application was made, the use is unlawful.

Other Matters

12. I note the appellant's frustration at the LDC application and appeal process and the effect this may have on his family's circumstances. However, this has had no bearing on my consideration of whether the development is lawful.

Conclusion

13. 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