



Appeal Decision

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 February 2025

Appeal Ref: APP/Z4310/X/24/3345384

80 Ash Grove, Picton, Liverpool L15 1ET

- The appeal is made under section 195 of the Town and Country Planning Act 1990, as amended, (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Simon Lawrence of SGL Properties against the decision of Liverpool City Council.
 - The application ref 24LE/0379, dated 8 February 2024, was refused by notice dated 4 April 2024.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a certificate of lawful use or development is sought is as a House of Multiple Occupation (HMO) for 3-6 persons (Use Class C4).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.
3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. 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 their evidence alone is sufficiently precise and unambiguous.
4. The application was seeking to establish that the use of the building as an HMO for up to six residents, within Class C4 of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987, was lawful at the date of the application. Section 191(2) of the 1990 Act provides that uses are lawful at any time if no enforcement action may be taken in respect of them because they did not require planning permission.
5. The appellant's case is that the change of use to an HMO comprised development 'permitted' under Article 3 and Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This concerns 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).
6. The Council has provided a copy of a Direction made under Article 4(1) of the GPDO relating to the area in which the appeal premises is located. This has the

effect of revoking 'permitted development' rights conferred by Schedule 2, Part 3, Class L(b). The Article 4 Direction was confirmed on 17 June 2021 and came into force on that date. The dispute between the parties is whether or not the change of use took place before the Article 4 Direction came into force, in which case it would have been lawful.

7. The appellant has provided further evidence with the appeal that was not available to the Council when it made its decision. Appeals under s195 of the 1990 Act are treated as 'de novo' appeals and the parties may submit additional evidence that was not before the Council previously. This is because s195 refers to the refusal being well-founded, which is the decision, not the reasons for the decision. I have taken the additional evidence into account, therefore. I note that this accords with the stance taken by the Inspector in a similar appeal that has been referred to by the appellant¹.

Main Issue

8. I must decide whether the use of the property as an HMO within Use Class C4 was lawful on the date of the application. The main issue is whether the Council's refusal to grant an LDC is well-founded.

Reasons

Evidence

9. The appellant has submitted a Statutory Declaration². This states that the appellant purchased the property on 15 January 2021 and at that time it was used as "a small HMO (C4 Use Class)". It is set out that the property has been used continuously as a small HMO since purchase and it remained in that use at the date of the declaration (25 January 2024).
10. There is a supporting letter from the appellant to the Council, dated 2 November 2023. This explains that the property was not vacant during the period 15 January 2021 to 30 June 2022, which the Council had assumed based on its Council Tax records. Instead, it is explained that renovation works were taking place during that period to increase the number of bedrooms to six. The property had been advertised for rent and six tenants had signed a contract with an intended occupation date from 1 July 2021.
11. The appellant has provided copies of signed Assured Shorthold Tenancy Agreements (ASTs), with the six named tenants, covering the period 1 July 2021 to 30 June 2022. There is also a schedule listing deposit payments and rent for each tenant throughout the rental period. This is supported by copies of bank statements showing credits that correspond to some of the deposits paid (January or February 2021) and rental payments between July 2021 and the end of the 2022 term.
12. In addition, the appellant has submitted a copy of a signed and dated AST, with six named tenants, for the period 1 July 2022 to 29 June 2023; and a further signed and dated AST, also for six named tenants, covering the period 2 July 2023 to 29 June 2024.

¹ Appeal Ref APP/Z4310/X/22/3292192 dated 17 November 2022.

² Under the Statutory Declarations Act 1835.

13. I have also been provided with the 'Approved Inspector's' final certificate for Building Regulations 2010, dated 13 July 2021, for the refurbishment and extension of the property, which was described as an HMO dwelling.
14. The additional evidence submitted with the appeal includes the Approved Inspector's notes, which detail the progress of works in March, April, May and June 2021. Invoices for carpets, and a new kitchen, dated 3 June 2021 and 1 June 2021 respectively are provided.
15. Finally, I note there is a letter from a neighbour claiming the property was not used as an HMO until after the Article 4(1) Direction came into effect.

Analysis

16. The property is a mid-terraced house, which comprises six bedrooms with shared facilities. Prior to the renovation works, the appellant states the property was used as a small HMO. The Statutory Declaration has been duly signed and witnessed and it carries significant weight. However, the details surrounding the previous use of the property prior to purchase are very limited and there is no supporting documentation. Furthermore, it is not apparent that any change of use prior to purchase took place after the permitted development right came into force on 15 April 2015.
17. In addition, the Council disputes the claim about the previous use. It refers to a previous planning application (ref 21LP/0141, dated 15 January 2021), which described the property as being in use as a single dwellinghouse. While this may have been an error on the form, the Council says the accompanying floorplans indicated there were only two bedrooms within the property, and so it would be unlikely to have been occupied as a small HMO. Further, the Council points out that floor plans submitted with an earlier application, that was withdrawn (ref 20F/2937), showed the same layout although it seems that application form indicated the property was in use as an HMO. Overall, this does not support the appellant's claim that the property was used as a small HMO prior to their purchase on 15 January 2021.
18. I must, therefore, consider the appellant's second argument that the material change of use took place when the renovation works commenced. The key question is whether the building was capable of being used as a small HMO as a matter of fact and degree, bearing in mind that it is possible to find that a change of use took place before the building was actually occupied.
19. Caselaw³ has established that too much stress has been placed on the need for "actual use". It is more appropriate to look at the matter in the round and to ask what use the building has or of what use it is. Thus, it is incorrect to regard commencement as automatically giving rise to the change of use or, conversely, to conclude that there had not been a change of use because the building was not actively occupied as a small HMO. Physical works may be relevant to the question of whether there has been a change of use but are not necessarily determinative.
20. Thus, it is necessary to look at the evidence in the round with regard to the former use of the building, the physical state of the building at the relevant date, the actual use of the building at that date, the intended use and the whole chronology.

³ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15.

Intended use should be considered objectively and with regard to evidence of, for example, any active marketing of the property for letting.

21. The earliest AST provided is for a tenancy commencing on 1 July 2021. This is signed but not dated. The guarantor form dated 15 March 2021 is not complete. The AST requires the first payments to be made on 1 June, but the evidence shows these were made on 1 July 2021. Three of the tenants paid deposits in January and one paid in February 2021. While this indicates a contractual obligation, I must also consider the physical state of the building.
22. The Building Regulations Final Certificate is dated 13 July 2021. This corresponds with the initial application for an HMO licence, made on 15 July and issued on 2 September 2021. These are after the date of the Article 4(1) Direction coming into force. I have also had regard to the notes of the Approved Inspector who visited the property in May. At that time, it was noted that the internal structure was formed, and the ground floor extension roof structure was in place. However, the works were not found to be generally complete until 28 June 2021. At that date the internal finishes were still ongoing. Carpets and the new kitchen had been ordered in early June, but it is unlikely they had been fitted at the time of the inspection.
23. It is clear that the physical state of the building at the relevant date, 17 June 2021, was incomplete. Significant works were necessary before the property could be occupied as a small HMO. I accept that there was an intended use as an HMO for occupation for up to six people. Some of the deposits had been paid and the tenancy would commence on 1 July 2021. However, there was no certification in place for the use and I am not satisfied that the building could have been occupied as a small HMO as the refurbishment was unfinished. In summary, the evidence does not show that the material change of use took place before the Article 4(1) Direction came into force.
24. This assessment contrasts with my findings on a different appeal, where similar issues were considered⁴. In that case, occupation of the HMO commenced after the relevant date. However, the conversion works at the property were substantially completed in May 2021. Copies of relevant certificates had been provided which, although dated July 2021 showed a clear intention to let the property. There was also a property management contract dated 18 December 2020. I found that the purchase of the property, the contractual arrangement with the property management company, the ASTs and certification, along with the physical works, gave rise to a material change of use prior to the relevant date.
25. In this case, I find the evidence to be less compelling, not least due to the physical state of the property in June 2021, the absence of certification relevant to the intended use, and the ambiguity around the date of the earliest AST and associated deposit and rental payments.
26. Another appeal⁵ has been provided but, again, the supporting evidence in that case was more persuasive. This included certificates to show the physical works to allow the property to be used as an HMO had been completed before the relevant date and the HMO licence was in place.

⁴ Ref APP/Z4310/X/21/3289727 dated 28 March 2022.

⁵ Ref APP/P4605/X/21/3268431 dated 8 June 2021.

27. A further appeal⁶, also referred to by the appellant, turned on the same issue. In that case, the evidence was again more complete. It included a site inspection report confirming completion of works prior to the relevant date, details of utilities accounts and statutory certificates.
28. I find that the evidence is not sufficiently precise and unambiguous to show, on the balance of probabilities, that the material change of use of the property to a small HMO (Use Class C4) occurred before the Article 4(1) Direction came into force. As such, the use would not have been lawful on the date of the application.

Conclusion

29. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a House of Multiple Occupation for 3-6 persons (Use Class C4) is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act.

D Moore

Inspector

⁶ Ref APP/Z4310/X/22/3294852 dated 18 April 2023.