



Appeal Decision

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by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2025

Appeal Ref: APP/D4635/X/24/3349579

87 Allen Road, Wolverhampton, WV6 0AW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Kleem Malik against the decision of Wolverhampton City Council.
 - The application ref 24/00776/CPE, dated 26 June 2024, was refused by notice dated 18 July 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 use of the property as an HMO (use class C4).
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Decision

1. The appeal is dismissed.

Main Issue

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether the evidence demonstrates that on the date of the LDC application, the appeal property was lawfully a house in multiple occupation (HMO) (use class C4).

Reasons

4. The appellant states that the whole of the property has been used as an HMO since being granted an HMO license in August 2019. He says that there are six tenants in the property. Within the LDC application form, the appellant says that the HMO use began on 28 November 2018.
5. On 14 September 2017, a Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) came into force, revoking permitted development rights under Class L(b) of Part 3 of Schedule 2, i.e., the change of use from a C3 dwellinghouse to a C4 HMO. Use of the property as an HMO (use Class C4) on 28 November 2018 post-dates the Article 4 Direction coming into force. Based on this evidence, I find that it was necessary for the appellant to seek planning permission for the HMO at this time. In other words, use of the property as an HMO (use class C4) was not lawfully permitted.

6. The appellant cannot claim immunity from enforcement action, in accordance with section 171B of the Act, as the evidence is that the use has not continued for ten years. The appellant does not appear to make any such claim but, in any event, the evidence from the occupiers of No. 83 Allen Road casts doubts over any possible claim in so far that they say *'we can categorically state that Mr Malik occupied 87 Allen Road with his wife and partner and children as a family home from 2006 to late summer 2018. Only subsequent to this did any conversions and change of use occur, and the property began to become used as an HMO'*.
7. The evidence from the occupiers of No. 83 Allen Road includes a response from the Council's enforcement service, following a complaint at the time, that states that the management company said that the *'property had been converted before the Article 4 Direction which removed the permitted development right came into effect. As such the Council do not have any avenue by which to prevent its continued use'*.
8. The onus is on the appellant to make his case in respect of the requested LDC. I have no idea what evidence was provided by the management company and considered by the Council when making the above comment. It may have been the case that some internal works were or had been undertaken prior to the management company taking over the property on behalf of the appellant, but this is speculation on my part. The comment made by the Council's enforcement service to the occupiers of No. 83 Allen Road has not been substantiated with any objective, clear or compelling evidence from the appellant. Moreover, and, in any event, there is no objective or clear evidence before me that the property was actually being used as an HMO at this time. In addition, the appellant has stated in his LDC application form that the HMO use began on 28 November 2018, and so this casts further doubt in terms of the accuracy of what was considered by the Council in the context of the email sent to the occupiers of No. 83 Allen Road.
9. In addition to the above, the appellant has commented, as part of his final comments, that *'prior to me moving in on 11 December 2006, the house was being rented out as an HMO'*. The appellant has not substantiated the claim that the property was used as an HMO prior to 2006 with any objective or clear evidence. Furthermore, this comment suggests to me that the property was used as a dwellinghouse from 11 December 2006. Even if the property had been used as an HMO prior to 2006, on the balance of probability I do not find that the evidence is sufficiently certain or unambiguous in terms of demonstrating use as an HMO immediately prior to 14 September 2017, i.e., when the Article 4 Direction came into force.
10. I note that the appellant considers that he has been misinformed by the Council in so far that it granted an HMO license for the property in 2019, and that this was despite the Article 4 Direction being in place at this time. The appellant also states that the current tenants in the property are settled and happy.
11. It is important that I emphasise that the HMO licensing control regime operates separately from the planning control regime. While I have some sympathy with the appellant's position, it is nonetheless necessary that I determine this LDC appeal based on the facts of the case and on relevant planning law and judicial authority. On the balance of probability, the evidence does not demonstrate that the HMO use has continuously existed for ten years, and, moreover, the appellant's own evidence suggests that the Article 4 Direction was in place prior to the property

being used as an HMO. As this is an LDC appeal, I am unable to consider any of the personal circumstances relating to the existing tenants in the property.

12. For the above reasons, and, on the balance of probability, I do not find that the evidence is sufficiently clear and unambiguous to demonstrate that use of the appeal property as an HMO (use class C4) is lawful. Planning permission is therefore required for such a use of the property.

Conclusion

13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use of the property as an HMO (use class C4) 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).

D Hartley

INSPECTOR