



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 14 February 2025

Appeal Ref: APP/Z4310/X/24/3350379

123 Alderson Road, Liverpool L15 1HG

- 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 Tablecheck Ltd against the decision of Liverpool City Council.
 - The application ref 23LE/2826, dated 12 November 2023, was refused by notice dated 11 April 2024.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which an LDC 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. S191(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 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(1) 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(1) Direction came into force, in which case it would have been lawful.

7. For the avoidance of doubt, the planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under s195 of the 1990 Act as amended. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

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 provided a Statutory Declaration¹, made by the occupier of the neighbouring property. It sets out their understanding that the appeal property was occupied as a shared house between April 2016 until the end of 2023. It is stated that it was never empty and was occupied by students or adult males.
10. Also provided is a Statement of Truth from an individual acting for the former landlord, dated 12 June 2023. This states that the property has been rented as a four-bedroom shared house since July 2017 and was occupied continuously by up to four unrelated adults during this time. There is also a letter, dated 26 May 2023, from the same person stating that the property has been used as a four-bed shared house, since 2014 which is contradictory.
11. An additional Statement of Truth, dated 2023, has been provided by a former tenant, which states they moved into the property in 2022 and remained there until 1 November 2023. During that time, they lived with unrelated adults sharing facilities, and there were four bedrooms available to let.
12. I have a further Statement of Truth, dated 30 October 2022, provided by a tenant which states they moved into the house in November 2019, has their own room, and shares facilities.
13. The appellant has submitted solicitor's letters, dated 26 June 2023, relating to the lease of Room 3 at the property dated 31 October 2022, and Room 4 dated 19 November 2019, informing each of the two tenants about a change of landlord. There is also a "relinquishment of tenancy document", dated 1 November 2023, for the tenant who formerly occupied Room 3.
14. I have copies of Assured Shorthold Tenancy Agreements (ASTs), as follows. Room 1; signed and dated 3 August 2020 for a period of six months commencing on 5 August 2020; an overlapping AST which is signed and dated 17 September 2020 for a period of six months commencing on 21 September 2020; and another signed and dated 3 December 2021 for six months from 10 December 2021.

¹ Made under the Statutory Declarations Act 1835, dated 14 August.

15. For Room 2; there is an AST, which is signed and dated 7 September 2022, commencing 8 September 2022 for six months.
16. Room 3; there is a copy of a signed AST, dated 31 October 2022 for a period of six months from that date. There is a related Section 21 notice seeking possession of Room 3, which is dated 13 July 2023 to take effect on 15 September 2023. There is a further AST for Room 3, signed and dated 4 January 2018 for six months from that date.
17. Room 4; there is an AST, signed and dated 18 September 2017 for six months, and another signed and dated 19 November 2019 for six months from that date, with an associated application form. I have also been provided with a Section 21 notice for Room 4, which is dated 13 July 2023 to take effect 15 September 2023.
18. Other evidence includes an 'Electrical Installation Condition Report', which is dated 21 September 2020, and a Gas Safety Certificate dated 11 November 2022. There are undated photographs showing locked doors for room numbers 2, 3 and 4 and photographs of mail addressed to various people at the appeal property. Finally, there is marketing information showing the property for sale "currently utilised as 4 letting rooms".
19. Contrasting evidence includes a letter from a neighbour claiming the property was never used as an HMO but occupied by a single person or a family. The Council refers to four representations in response to the application; one of which supports the appellant's version of events, but the others are contradictory claiming the property was occupied by a single family.

Analysis

20. The appeal property is a mid-terraced house, which comprises four bedrooms with shared facilities. The submitted Statutory Declaration is duly signed and witnessed and this carries significant weight as sworn evidence. However, the declaration was submitted by a neighbour, as opposed to an occupier, and is based on their understanding of how the property was used and occupied rather than first-hand experience. In consequence, it contains assumptions about the number of occupants and their relationships to each other.
21. The statements of truth cannot be afforded the same weight as the sworn evidence, since they are not subject to the same sanctions. I accept they provide corroboratory information.
22. The statements are supported by the ASTs that suggest rooms in the property were let to individuals before the Article 4(1) Direction came into force on 17 June 2021. However, the AST evidence is limited due to the availability of information, and it is not clear how many rooms were occupied. Moreover, the ASTs are not necessarily evidence of occupancy as shown by the duplication in respect of Room 1. The solicitor's letters provide supporting evidence about the occupancy of Room 4 prior to the relevant date but, again, the documentation is limited in respect of the remainder of the property. The electrical installation report would have been required for an HMO, but this does not show occupancy.
23. Taking the evidence as a whole, I accept it is likely that the property has been let to individuals prior to the relevant date. However, the nature of the use as a small HMO is less clear, and it is not apparent that there was no subsequent reversion to

use as a single dwellinghouse. Crucially, there is a suggestion in a letter from the managing agent that the change of use to an HMO took place in June 2014 before the permitted development right came into force. This is reiterated in the appeal statement. It may be an error, but it cannot be ignored as it casts doubt on the question of lawfulness.

24. I find, therefore, that the appellant has not shown, on the balance of probabilities, that the change of use to an HMO for 3-6 persons (Use Class C4) from a dwelling house (Class C3) took place before the date of an Article 4(1) Direction nor that there was no further change of use before the date of the application. Furthermore, it is not clear that any change of use to a small HMO took place after the relevant permitted development right came into force on 15 April 2015. As such, I cannot find the use was lawful as at the date of the application.

Conclusion

25. For the reasons given above, I conclude that the Council's refusal to grant an LDC 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