

Appeal Decision

Site visit made on 12 March 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 20th March 2025

APP/Z4310/X/24/3345738

2 Halkyn Avenue, Liverpool L17 2AH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), 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 Philip Spence.
- The application, reference 23/LE/2524, was dated 6 October 2023. It was refused by a notice dated 8 March 2024.
- The Application was for a Certificate of Existing Lawful Development for 7 Bed House in Multiple Occupation (HMO) – Sui Generis and erection of a single storey extension.

Summary of decision: The appeal in respect of the use of No. 2 Halkyn Avenue as a 7 Bed House in Multiple Occupation (HMO) is dismissed. That part of the appeal in respect of the erection of a single storey extension is allowed. A certificate of lawful development is issued, in the terms set out below in the formal decision.

Appeal property and application

1. The appeal property, No. 2 Halkyn Avenue Road, Liverpool, is a large 2 storey detached house on the corner of the junction of Halkyn Avenue with Rossett Avenue. A small single storey extension has been added at the rear of the house.
2. The application was for a Certificate of Existing Lawful use of No. 2 Halkyn Avenue as a 7 Bed House in Multiple Occupation (HMO) and the erection of a single storey rear kitchen extension.
3. This application is the same as an earlier application which was ultimately turned away on appeal in decision ref: APP/Z4310/X/23/3324150 issued on 27 September 2023. The Inspector in that case determined there were such gaps in the submitted evidence that lawfulness of the HMO use and the built development had not, on the balance of probabilities, been shown. The Applicant's additional evidence seeks to fill those apparent gaps.

Single storey extension

4. As set out in the 4th bullet point above, the application seeks certification that the use of No. 2 Halkyn Avenue as a 7 Bed House in Multiple Occupation, (HMO), has become lawful due to the passage of time, as has the building of the single storey kitchen extension at the rear of the property.
5. The Council accepted that the Applicant Mr Philip Spence had shown by means of date stamped photographs that the kitchen extension works had been substantially completed at least 4 years prior to the date of the application as set out in s.171B(3) of the Act and were thus lawful, (s.191(2) of the Act). There is therefore no issue

between the parties on this matter before me. A certificate of lawfulness to that effect is attached to this decision.

Lawfulness of the 7 Bed House in Multiple Occupation, (HMO), use

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 purpose of the LDC provisions is to enable the making of an objective decision based on the best facts and evidence available when the decision is made. Evidence should not be rejected simply because it is uncorroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted, (*Gabbitts v SSE & Newham BC* [1985] JPL 630, also *Ravensdale Ltd v SSCLG*, and *Para 006 NPPF - Planning practice guidance*).
8. In the earlier appeal decision ref: APP/Z4310/X/23/3324150 of 27 September 2023, the Inspector noted that many of the tenancy agreements were unsigned; there was what he regarded as a significant break of 12 months between 2016 and 2017 when there were no agreements, signed or otherwise. There were no agreements dated between 2018 and April 2023. Also, there had been little indication of the number of occupants.
9. The Applicant said that further evidence of the use of the appeal property at No. 2 Halkyn Avenue as a 7 person HMO had now been submitted to show that such use had started before 6 October 2013. Substantial additional details and lists of tenants had also been produced. The Council accepted that the new evidence showed 7 individuals in contract to live at No. 2 Halkyn Avenue sharing facilities covering the period 1 July 2013 to 30 June 2023. However, they appeared much exercised as to a lack of signatures on tenancy agreements in the relevant 10 year period. They also said the application was missing tenancy agreements for periods in 2016 - 2017, 2018 - 2019 and from July 2023 - 2024.
10. I am more concerned about the difficulty for the Applicant to demonstrate, on the balance of probabilities, that the property had been in uninterrupted occupation by 7 persons for the period of 10 years up to the date of this application on 6 October 2023. That is, the HMO use started on or before 6 October 2013 and had been in continuous such use and in occupation by 7 persons at all times to the extent that the Council could have taken enforcement action against that specific use at any time in the relevant period, (*Thurrock BC v SSETR & Holding* (COA 27.2.02, J 1080). Any gaps, that is where it was not shown the property was occupied by 7 persons would mean that an ongoing unlawful 7 person HMO use ceased during the relevant period and that the time passed up to that point would not count towards immunity. The "clock" would restart when the particular unlawful use recommenced.
11. It is apparent that No. 2 Halkyn Avenue has been used as a 7 person HMO during the relevant 10 year period and that it may have been available for such use at all times in the period. The question is whether the use and occupation by 7 persons was continuous, not whether the property was fitted out or intended for occupation by 7 persons, (*Islington LBC v SSHCLG & Maxwell Estates* [2019] EWHC 2691 (Admin)). It can be a difficult test to pass by demonstration. That is especially so here, where, for example, actual occupation of the house at No. 2 by fewer than 7 persons for even a short period for example, could have placed the property in a C4 (3 – 6

persons) HMO use, a use that might have been lawful if it was considered to have been in a lawful C3 use, (single dwelling), beforehand and that change had taken place between 1 October 2010 and 17 June 2021. That seems to me to have been more likely where students were the tenants, living in what would probably not have been their only home and who would have been more likely to be away for periods outside term time, (the Use Classes Order 1987 as amended defines C4 Houses in multiple occupation (as) - small shared houses or flats occupied by between three and six unrelated individuals, as their only or main residence).

12. If No. 2 had remained in an HMO use but with fewer than 7 persons in occupation at any time, a possible C4 use might have been lawful by virtue of the provisions of the changes to the Use Classes Order whereby from 1 October 2010 a change of use from a dwelling (C3) use to use as a House in Multiple Occupation (HMO) (C4 3 – 6 persons) use did not require planning permission. In that instance, C4 lawfulness would not have been lost by the coming into effect of the Council's Article 4 Direction on 17 June 2021 as that would have applied only to proposals to change the use of a C3 dwelling to a use as a C4 HMO after that date. It would not cause the loss of then existing lawful rights. Unless a lawful C4 use reverted to a C3 use, the lawfulness of the C4 use would not be readily lost.
13. National Planning Policy Guidance requires evidence to be precise and unambiguous. In the present instance the evidence provided does meet these criteria and the evidence for a lawful 7 person HMO use on 6 October 2023 is considered not to satisfy the provisions of Section 191(2)(a) read with Section 171B(3) of the Act.

FORMAL DECISIONS

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the use of No. 2 Halkyn Avenue, Liverpool L17 2AH as a 7 Bed House in Multiple Occupation (HMO) was well founded and that the appeal should fail.
15. I further conclude that the Council's refusal to grant a certificate of lawful development for the erection of a single storey extension No. 2 Halkyn Avenue, Liverpool L17 2AH was not well founded and that this part of the appeal should succeed.
16. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the retention of the single storey extension as applied for. It is attached to this decision, as are the plans submitted with the application.

John Whalley

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 (as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 6 October 2023 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, was lawful within the meaning of section 191(1)(b) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The erection of a single storey extension has become lawful due to the passage of time.

John Whalley

INSPECTOR

Date: 20th March 2025

Reference: APP/Z4310/X/24/3345738

First Schedule

The erection of a single storey extension.

Second Schedule

No. 2 Halkyn Avenue, Liverpool L17 2AH

IMPORTANT NOTES OVERLEAF
NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule was lawful on the certified date and thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plans. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 191(6) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

