

Appeal Decision

Site visit made on 9 April 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 22nd April 2025

APP/Z4310/X/24/3355311

47 Thorneycroft Road, Liverpool L15 0EN

- 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 Sam O'Flaherty.
- The application, reference 23LE/2431, was submitted on 29 September 2023. It was refused by a notice dated 23 November 2023.
- The Application for a Certificate of Existing Lawful Development for a House in Multiple Occupation for 3 - 6 persons (Use Class C4) was made under section 191(1)(a) of the Act in respect of the property at No. 47 Thorneycroft Road, Liverpool L15 0EN.

Summary of decision: The appeal is dismissed.

Appeal property and application

1. The appeal property, No. 47 Thorneycroft Road, is a mid-terrace house in a residential road of similar properties in the Wavertree area of Liverpool. There was a lounge and separate kitchen/living room on the ground floor and 3 bedrooms and small shower/w.c. room on each of the first and second floors.
2. The application, made by Mr Sam O'Flaherty, was that by the 17 June 2021, the date the Article 4 Direction, (Town and Country Planning (General Permitted Development) (England) Order 2015 as amended), came into effect, removing permitted development rights for conversion from a Use Class C3 dwellinghouse to a Use Class C4 House in Multiple Occupation, (HMO), work on the property was substantially complete and the property was in a habitable condition for use of the dwelling at No. 47 Thorneycroft Road as a House in Multiple Occupation, for 3 - 6 persons (Use Class C4 - The Town and Country Planning (Use Classes) Order 1987).

Background

3. The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 came into force on 6 April 2010. It introduced a new Use Class (houses in multiple occupation, Use Class C4) - Article 2(4). It covered use of a dwellinghouse as a house in multiple occupation as defined in s.254 of the Housing Act 2004. A dwelling that falls within Use Class C4 is a small shared house occupied by between 3 and 6 unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. From 1 October 2010 a change of use from a dwelling (C3) use to use as a House in Multiple Occupation (HMO) (C4) does not require planning permission.
4. However, a Liverpool City Council Article 4 Direction came into force on 17 June 2021 in the area covering the application site address, removing permitted development rights for conversion from a Use Class C3 dwellinghouse to a Use

Class C4 small HMO. Dwellings that were lawful 3 – 6 person HMOs before 17 June 2021 would not be caught by the Direction.

5. 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 or deemed to have been refused and an appeal made, the burden of proof to show that the decision was not well founded lies with the appellant.

Appellant

6. For the Appellant, Mr O'Flaherty, it was correctly stated that 2 dates are particularly significant. That is, the date of the Article 4 Direction coming into effect, (17 June 2021, para 4 above), and the date the application was submitted, 29 September 2023. Mr O'Flaherty needed to show that a change of use of No. 47 Thorneycroft Road from a C3 dwelling to use as a C4 HMO had taken place and had become lawful by 17 June 2021, the date of coming into effect of the Article 4 Direction and had continued without reversion to a single residential dwelling or other change of use up to the date of the s.191 application submission, 29 September 2023.
7. Mr O'Flaherty said the physical alterations to the property to facilitate the C4 HMO use were substantially completed prior to the Article 4 Direction coming into effect. The layout and makeup of the property was not suitable for single family occupancy, (C3 use). A material change of use had occurred. Before the Article 4 Direction came into effect, the Appellant was contractually bound to provide the accommodation within the C4 Use Class. There had been a clear intention to occupy the property as a C4 Use Class HMO for 6 unrelated individuals, prior to the Article 4 Direction coming into effect.

Considerations

8. On 21 June 2021, just after the coming into effect of the Article 4 Direction on 17 June 2021 the s.78 planning appeal ref: APP/Z4310/W/21/3270630 site visit to No. 47 Thorneycroft Road took place. That appeal concerned the proposed change of use from a C4 use class HMO for up to 6 occupiers to a sui generis use, (use of its own kind), class HMO for up to 7 occupiers, facilitated by a single storey rear extension, rear dormer, and the installation of 2 rooflights on the front elevation. The Inspector dealing with that appeal noted there appeared to be construction works being undertaken, the Appellant having indicated the property was being used as an HMO with six of the rooms being occupied. The Inspector went on to say: "There is no substantial evidence before me to confirm that the property and bedrooms are or are not being occupied.". From that, I unable to conclude, on the balance of probabilities, that the dwelling at No. 47 was in actual use as a 3 to 6 persons HMO. Also, it may have been unclear whether the intention at that time was to start or restart a 3 - 6 persons HMO or commence use as a 7 person large HMO as described in the s.78 planning appeal.
9. If, as the Appellant contended, the intention at the time of the coming into effect of the Article 4 Direction was to operate a 3 – 6 persons HMO C4 use, he said it was supported by a number of submitted details:
 - 3 Assured Shorthold Tenancy Agreements for 6 tenants, covering periods 1 July 2021 to 30 June 2024
 - Floor Plans showing 6 bedrooms over 2 floors
 - 2 Statutory Declarations, Bank Statements from July 2021, messages from future occupiers of the property, 12 January 2021 and 20 June 2021
 - Deposit Protection Scheme - 6 tenants - 1 July 2021 – 30 June 2022.

10. Those details appear to support the C4 HMO project proposal, even though in June 2021 there was a 7 person HMO scheme under appeal. What seems clear, however, is that these projects were being planned at the time of coming into effect of the Article 4 Direction on 17 June 2021. There was no cogent evidence that the improvement and extension works referred to in para. 8 above had been completed and the property at No. 47 occupied. It may be there was an intention to start the use. In my view, however, there is a distinction to be drawn between such an intention and the commencement of the use, similarly with the consideration of enforcement action against potential unlawful uses, an enforcement notice cannot be issued against an anticipated breach of planning control. It is not clear in the present case for instance, that the use when actually started would have been a C3 HMO or a 7 person Large HMO use.
11. I consider the evidence before me of a lawful use of No. 47 Thorneycroft Road as a House of Multiple Occupation for 3-6 persons (Use Class C4) having started before 17 June 2021 insufficient for me to issue a certificate of lawfulness.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development on the application made for the existing use as a House in Multiple Occupation for 3 - 6 persons (Use Class C4) under section 191(1)(a) of the Act in respect of the property at No. 47 Thorneycroft Road, Liverpool L15 0EN was well founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

FORMAL DECISION

13. The appeal is dismissed.

John Whalley

INSPECTOR