
Appeal Decision

Site visit made on 18 February 2025

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 23rd April 2025

Appeal Ref: APP/M4320/X/24/3339953

27 Scarisbrick Street, Southport PR9 0TU

- 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 Adrian Esmat against the decision of Sefton Metropolitan Borough Council.
 - The application ref: DC/2023/01726, dated 19 October 2023, was refused by a notice dated 15 January 2024.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a LDC is sought is use of the property as a house in multiple occupation consisting of six units of accommodation.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Background

2. The description of the use for which a LDC is sought in section 8 of the application form is *'one self-contained one bed flat, one non-self-contained two bed flat and four self-contained studio flats'*. The Council changed that description to *'continuation of use as a 6 bed HMO'* and a reference is made to *'C4'* on the amended application form (section 7). Even though, he agreed to the description being changed prior to the Council validating the application the appellant is unrepresented. Moreover, Class C4 (class C4) of the Town and Country Planning (Use Classes) Order 1987 (UCO) relates to the use of a dwellinghouse by not more than six **residents** as a "house in multiple occupation" (HMO) and not six **bedrooms** (my emphasis). Therefore, it is irrelevant to refer to the number of bedrooms within the description of the use that the LDC is being sought for where it relates to an HMO use falling under Class C4.
3. Moreover, the evidence before me indicates that a renewal of a licence for an HMO was granted in May 2020 and that licence would have expired on 20 October 2024. The licence states that it is granted for the occupancy of the premises by a maximum of 9 people. Therefore, if the HMO was occupied by 9 residents it would not have fallen within Class C4. The specific conditions section of that licence limits the maximum occupancy of each 'flat' and it cites a basement and five other 'flats'. Whilst 'flats' are cited within the application form description and the HMO licence, on the appeal form the appellant has stated that the actual use of the site at the time of application to the LPA was *'A licensed house in multi occupation consisting of six units'*. Therefore, it is clear that the appellant considers that the six units of accommodation or 'flats' cited within the evidence before me forms an HMO and that is the use for which a LDC is sought.

4. Taking into account all of the above, I will deal with the appeal on the basis that the LDC application was made under section 191(1)(a) of the 1990 Act with regard to the use of the property as a house in multiple occupation consisting of six units of accommodation.
5. The appeal site is a relatively large semi-detached 2-storey property which has a basement level and rooms in the roof. On the day of my site visit the property did not appear to be in use. There is a basement level that appears to have formed a one bedroomed self-contained unit of residential accommodation. On the ground floor there are 3 generous sized rooms that have locks on the doors and their existing/past use as bedrooms and/or lounge/dining room/s is not currently apparent, a kitchen and bathroom are also on this floor. A hallway from the front door to the stairs provides access to the upper floors and therefore the residential accommodation on this floor is not self-contained. The kitchen and bathroom on this floor appear to have been available for all residents in the property to use. There are three relatively small self-contained units of residential accommodation on the first floor and another one within the roof space.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

7. In order for an LDC to be granted under section 191 of the 1990 Act, the burden of proof is with the appellant and the appropriate test of the evidence is the balance of probabilities. The onus is firmly on the appellant to show that the use of the property as a house in multiple occupation consisting of six units of accommodation at the date the LDC application was made, 19 October 2023, was lawful. 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 his evidence alone is sufficiently precise and unambiguous.
8. Section 191(2) of the 1990 Act states that 'For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.' In this case there is no evidence before me to indicate that there was an enforcement notice in force at the date of the LDC application.
9. There is no evidence before me to indicate that the appellant considers that the use of the property as a HMO did not involve development or require planning permission. As such, section 171B(3) of the 1990 Act says '*in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.*' The date of the LDC application is 19 October 2023 therefore the appellant needs to show, on the balance of probabilities, that the use of the property as a house in multiple occupation consisting of six units of accommodation began on or before 19

October 2013 and has continued thereafter for at least 10 years without significant interruption.

10. The evidence before me includes a completion statement from October 2005 when the appellant purchased the property. There is also a surveyor's report dated 11 August 2005 and this indicates that at that time the property was split into 6 units of accommodation and that all the units or 'flats' were let. An extract from an electoral roll which the appellant states is for 2007 includes 7 names of people registered at the property. Additionally, as stated above there is also a copy of an HMO licence which is for the period 11 May 2020 to 20 October 2024.
11. I acknowledge that this evidence as a whole supports the appellant's case that the property appears to have been physically laid out, since at least 2005, as six units of accommodation. However, that evidence does not indicate when the use as an HMO consisting of six units of accommodation began. It also only indicates that on the 11 August 2005 the six units were all let out and that on a set date in 2007 7 people were on the electoral roll at the property. That evidence is ambiguous regarding when the units of accommodation were occupied and whether that occupation was continuous without significant interruption.
12. There is no evidence, such as bank statements, before me to indicate that the appellant has received any rental payments from individual tenants since he purchased the property. Moreover, there are no copies of tenancy agreements to show who occupied and when they rented the accommodation. There are no statutory declarations from any previous tenants indicating how it was used and when it was occupied. Nor is there one from the appellant explaining how the property has been used since he purchased it and the dates tenants have occupied it.
13. Taking into account all of the above, there is insufficient precise and unambiguous evidence before me to show when the use of the property as a house in multiple occupation consisting of six units of accommodation began and that it continued for at least 10 years thereafter without significant interruption. As with all LDC applications, it is open for fresh applications to be made if, for example, other evidence comes to light.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a LDC for the use of the property as a house in multiple occupation consisting of six units of accommodation 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.

D Boffin

INSPECTOR