

Appeal Decision

Site visit made on 10 January 2017

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 January 2017

Appeal Ref: APP/Z4310/X/16/3150005

Annexe at rear of 16 Greenfield Road, Liverpool L13 3BN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Paschal McCrumlish against the decision of Liverpool City Council.
 - The application Ref 15LP/3107, dated 8 December 2015, was refused by notice dated 3 February 2016.
 - The application was made under section 192(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 HMO within Use Class 4 of the Use Classes Order.
-

Decision

1. The appeal is dismissed.

Procedural matter

2. An application for costs was made by Paschal McCrumlish against Liverpool City Council. This application is the subject of a separate Decision.

Reasons

3. 16 Greenfield Road is a mid-terraced residential property with a front and back garden. At the rear of the back garden is the annexe building that is the subject of the appeal. The annexe, which has a frontage to an access way, has a living/kitchen/dining room, a small hall/living room and a shower room at ground floor level, and two bedrooms at first floor level. The Appellant is the owner of the residential property and the annexe. Evidence indicates that the main building is a house in multiple occupation with a self-contained flat at basement level.
 4. The change of use of a Class C3 dwellinghouse to a Class C4 house in multiple occupation (HMO) is development permitted under the provisions of Class L(b) of The Town and Country Planning (General Permitted Development) (England) (Order) 2015. The Appellant is seeking an LDC for use of the annexe as an HMO on the basis that its use as a dwellinghouse has been established by its occupation as a dwellinghouse for the four year period prior to the date of the application and is therefore immune from enforcement action against such a use of the building.
 5. The main issue is whether the annexe was in lawful use as an independent dwellinghouse on the date of the application. The burden of proof in a LDC application is on the applicant though there shall be no good reason to refuse the
-

application provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of an LDC on the balance of probability.

6. The main residence was occupied by the Appellant and his wife and child between December 2007 and June 2009 when they returned to live in Ireland. Since then the main residence has been rented out and they have occupied the annexe intermittently because they retain business interests, and have family living, in Liverpool. The occupation of a building does not have to be continuous for it to be in use as a dwellinghouse. In this regard the Appellant and his wife have occupied the annexe, separately and together and sometimes with the Appellant's father, intermittently over the four year period.

7. Statutory declarations by the Appellant, his wife and his father detail the periods that they have occupied the annexe between March 2011 and December 2015. During this period of four years and ten months (about 1,766 days) the Appellant was resident for about 172 days, his wife for about 277 days and his father for about 88 days. It is clear from this evidence that the annexe has been regularly used by them and has been a convenient place for them to stay whilst visiting Liverpool for business and family reasons. The Appellant has submitted invoices for work carried out to the annexe but these do not demonstrate any independent residential use of the building.

8. The annexe is not registered for the separate payment of Council Tax and there is no evidence to indicate that the building is metered separately for the payment of utility services. Crucially, during the four year period, the Council could not have taken enforcement action against use of the annexe as an independent dwellinghouse because it was not separate from the main building for the payment of Council Tax and utility services. The Appellant could have claimed, during the relevant period, that the annexe was, like the self-contained basement flat, an element of the residential use of the whole property. The planning unit between Greenfield Road and the access way has not been subdivided and remains a single planning unit in residential use.

9. The evidence provided in the statutory declarations is accepted but does not justify a conclusion that the annexe has been in use as a dwellinghouse independent from the residential use of the whole property, which remains a single planning unit in residential use. There is insufficient precise and unambiguous evidence to conclude other than that the annexe was not in lawful use as an independent dwellinghouse on the date of the application. The Council's refusal to grant an LDC for 'HMO within Use Class 4 of the Use Classes Order' at Annexe at rear of 16 Greenfield Road, Liverpool was well-founded. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector