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# Appeal Decision

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

**an Inspector appointed by the Secretary of State**

**Decision date: 05 November 2024**

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**Appeal Ref: APP/Z4310/X/24/3342104**

**11 Jubilee Drive, Liverpool L7 8SJ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Mrs Margaret Torrance of 'Accommod8' against the decision of Liverpool City Council.
  - The application Ref 23LE/0823, dated 30 March 2023, was refused by notice dated 12 October 2023.
  - The application was made under section 191(1)(a) of the 1990 Act.
  - The use for which an LDC is sought is "house of multiple occupation for 3-6 persons (Use Class C4)".
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## Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

## 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 planning merits of the use, such as parking and/or noise and disturbance as raised by an interested person, are not relevant and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act. 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.
5. 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. Section 191(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.

6. 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).
7. 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 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 Direction came into force, in which case it would have been lawful.

### **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 was well-founded.

### **Reasons**

#### *Evidence*

9. The appeal documents include a timeline of the rental history. This sets out that No 11 was occupied by four tenants (not as an HMO) between September 2016 and June 2017. There was then a void period for maintenance from July 2017 to February 2018. From March 2018, the property was managed by Now Rooms and an HMO licence was granted in October 2018. A new managing agent, X1, was appointed in February 2019. Management was transferred back to Now Rooms in July 2019, and then to Accommod8 in July 2022. A new HMO licence was granted in July 2022. Copies of the relevant HMO licences have been provided, albeit the 2022 licence was granted in September of that year.
10. There is a range of evidence in support of this timeline. The appellant has submitted a sworn statement, dated 28 March 2024. This states the appeal premises has been operated/used as a small HMO since March 2018. There is also a sworn statement, dated 25 April 2023, from A J Blythe a Director of Accommod8 (NW) Ltd, that states the property has been used as a small HMO since 2016. A statement of fact has been provided by T Kennedy of Now Rooms, dated 28 February 2024, which explains the property was rented with Now Rooms from March 2018 to February 2019, then from July 2019 to July 2022. During those times it was occupied by multiple tenants as an HMO.
11. The appellant has submitted a Council Tax Bill 2023/24 for the property which shows a student exemption from 1 July 2022. There is also a series of Assured Shorthold Tenancy Agreements dating from March 2018 to June 2024. Remittance statements have been provided by the letting agents covering the period 2018 to 2024 along with bank statements and rental statements showing income.
12. In addition, the Council has confirmed that the property has an HMO licence for 5 people from 14 February 2020 to 13 February 2025, and there was a previous licence from 2 October 2018.

### *Analysis*

13. The sworn evidence has been duly signed and witnessed and this carries significant weight. In addition, there is considerable supporting evidence including a statement of fact, tenancy agreements and relevant documentation that accords with the appellant's version of events. The totality of the evidence shows that the property has been used and occupied as a small HMO since March 2018.
14. The Council maintains there is insufficient proof of occupancy prior to the relevant date. This appears to be because more evidence has been provided with the appeal that was not available to the Council when it made its decision. Appeals under s195 are treated as 'de novo' appeals and the parties may submit additional evidence that was not before the authority previously. This is because s195 refers to the refusal being well-founded, which is the decision, not the reasons for the decision.
15. Overall, I am satisfied that the appellant's evidence is sufficiently precise and unambiguous to show, on the balance of probabilities, that the building was occupied as an HMO from before the date of the Article 4(1) Direction. The change of use of the building to an HMO within Class C4 of the Use Classes Order would have been permitted development by virtue of Article 3 and Schedule 2, Part 3, Class L(b) of the GPDO, and was lawful at the date of the application, therefore.

### **Conclusion**

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of a house of multiple occupation for 3-6 persons (Use Class C4) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

*D Moore*

Inspector



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# 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 (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 30 March 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The building was occupied as a House in Multiple Occupation (HMO) from before the date of the Article 4(1) Direction (of the Town and Country Planning (General Permitted Development) (England) Order 2015). The appellant's evidence is sufficiently precise and unambiguous and it has been shown, on the balance of probabilities, that the use of the building as an HMO was lawful at the date of the application.

Signed

*D Moore*

Inspector

Date 05 November 2024

Reference: APP/Z4310/X/24/3342104

## **First Schedule**

House of Multiple Occupation for 3-6 persons (Use Class C4).

## **Second Schedule**

11 Jubilee Drive, Liverpool L7 8SJ

## NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



## Plan

This is the plan referred to in the Lawful Development Certificate dated: 05 November 2024

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

**Land at: 11 Jubilee Drive, Liverpool L7 8SJ**

**Reference: APP/Z4310/X/24/3342104**

Scale: NTS

