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# Appeal Decision

Site visit made on 12 November 2024

**by A Walker MPlan MRTPI**

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

**Decision date: 25 November 2025**

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**Appeal Ref: APP/Z4310/X/24/3343245**

**80 Blantyre Road, Liverpool L15 3HT**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Martin Nelson on behalf of Avondale Properties (Southport) Ltd. against the decision of Liverpool City Council.
  - The application ref 23LE/2009, dated 7 August 2023, was refused by notice dated 12 December 2023.
  - The application was made under section 191(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 use as a house in multiple occupation (HMO) under 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.

## Main Issue

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

## Reasons

3. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) and (b) of the Town and Country Planning Act 1990 (the Act) if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. 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.
4. A Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 applies to the area in which the appeal property is located. The Direction came into force on the 19 July 2018 and removes the permitted development rights conferred by Schedule 2, Part 3, Class L(b), ie 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).

5. Given the above, the question is whether the use of the appeal property materially changed to use as a C4 Use Class house in multiple occupation (HMO) after the Class L(b) permitted development rights came into force, but prior to the date on which the Article 4 Direction came into force (19 July 2018) and therefore had the benefit of planning permission.
6. A statement of facts from the company that previously managed the appeal property confirms the appeal property was occupied by up to 4 tenants between 2011 and 2019, before the appeal property was sold. Whilst this is not a statutory declaration and therefore cannot be afforded the same weight as such, it is nevertheless witnessed by a solicitor and is declared as being the truth.
7. There is a discrepancy between this statement and the statement of facts from the previous owner, who confirms the property was rented out on a room by room basis for up to 5 people between 2008 and 2019 and was occupied by 5 people at the time the Article 4 Direction came into force. Nevertheless, whether it was occupied by 4 or 5 tenants, it would still be a C4 use class HMO.
8. In addition to the statements, there are two Zoopla extracts of listings for the appeal property dated 2 June 2018 and 25 August 2018. Whilst the August extract postdates 19 July 2018, the June extract is only one month before and therefore gives a good indication of the use of the property at the time the Article 4 Direction came into force. The description in the extract states there is 'one room available in this 5-bedroom...available now'. The extract also goes on to describe the other tenants as being 'in their 20s and 30s; one is a dj, one work in a pub/restaurant in town, a government employee, another one works in a local company and a mature student'.
9. The August extract corroborates this, in that it lists 2 rooms being available and the existing tenants being 'in their 20s and 30s; one is a dj, one work in a pub/restaurant in town, another one works in a local company', suggesting the government employee referred to in the June listing vacated the property, hence the advert for 2 rooms instead of 1.
10. The dates of the Zoopla extracts are clear and the description of the property and occupants gives a good indication that it was in use as a C4 use class HMO between 2 June 2018 and 25 August 2018. Therefore, even if the property changed use between an HMO and a single-family dwelling on occasions between 2013 and 2019, the Zoopla evidence is sufficiently precise to indicate it was in a C4 use class at the time the Article 4 Direction came into force.
11. Having established the appeal property was in use as a C4 use class HMO at the time the Article 4 Direction came into force, for the use to be lawful at the time the LDC application was made, it needs to be demonstrated there was no material change of use of the property between 19 July 2018 and 7 August 2023. There is no question the use was abandoned. The Council refer to tenancy agreements each signed by 4no tenants for the periods of 1 June 2021 and 30 June 2022, and 30 June 2022 and 1 July 2023. Although copies of these agreements are not before me, the Council raise no objections to them. I find no reason to conclude otherwise.
12. I have had regard to the representations made by a local resident, stating there has not been 3 or more people living at the property since 2015.

However, this not only conflicts with the Zoopla listings submitted by the appellant but also the Council's statement that 'The council tax email is clear that...the property was used as an HMO for periods between 2013 and 2019...', all of which suggest the property has, at the very least, been in occupation by 3 people or more on occasion since 2015.

13. I find therefore, the evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, the use of the appeal property changed to a C4 Use Class house in multiple occupation after Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 came into force, but before the Article 4 Direction came into effect. The use then continued up to the date of the LDC application.

### **Other Matters**

14. I have had regard to the Inspector's consideration of the previous appeal<sup>1</sup> for the property. They refer to the Article 4 Direction coming into force on 18 April 2018. However, that was the date on which it was confirmed, not when it came into force. Therefore, they appear to have considered only one of the Zoopla extracts as predating the actual date it came into force – 19 July 2018. Reference is made to a December 2013 Zoopla listing and it is this that I assume was the one referred to by the Inspector as predating the Article 4 Direction. With regard to the listings, the Inspector also states 'dates are inconclusive as they relate to previous listings'. This suggests the Inspector was presented with different Zoopla listings to those presented to me as the dates are explicitly clear on those before me. Accordingly, I am satisfied that having regard to the correct date on which the Article 4 Direction came into force and based on the evidence before me, there is sufficient evidence to make a decision contrary to the previous Inspector.

### **Conclusion**

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*A Walker*

INSPECTOR

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<sup>1</sup> Appeal Reference: APP/Z4310/X/22/3301956

## 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 7 August 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 evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, the use of the appeal property changed to a C4 Use Class house in multiple occupation after Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 came into force, but before the Article 4 Direction came into effect. The use then continued up to the date of the LDC application.

Signed

*A Walker*

Inspector

Date: 25 November 2024

Reference: APP/Z4310/X/24/3343245

### ***First Schedule***

A house in multiple occupation (HMO) under Use Class C4

### ***Second Schedule***

Land at 80 Blantyre Road, Liverpool L15 3HT

IMPORTANT NOTES – SEE OVER

## 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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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: 25 November 2024

**by A Walker**

**Land at: 80 Blantyre Road, Liverpool L15 3HT**

**Reference: APP/Z4310/X/24/3343245**

Scale: Not to Scale

