



Appeal Decision

Site visit not required

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 JUNE 2025

Appeal Ref: APP/U4230/X/25/3361042

77 Falcon Crescent, Swinton, M27 8JP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Daniel Fung of Fine West Limited against the decision of Salford City Council.
 - The application ref PA/2024/1757, dated 22 November 2024, was refused by notice dated 23 January 2025.
 - 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 for an existing use as a small HMO (use class C4).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The LDC application form refers to an '*Application for a Lawful Development Certificate for a Proposed Use or Development*' and hence was made under section 192 of the Act.
3. Notwithstanding the above, the Council's refusal notice refers to an LDC application made under section 191 of the Act. Clarification has been sought from the main parties about this matter as part of this appeal. The appellant has confirmed that the wrong LDC application form was completed and that it should have related to an LDC application made under section 191 of the Act. This is how the local planning authority determined the LDC application. I have therefore proceeded to determine this appeal in respect of an LDC seeking confirmation that the existing lawful use of the land is a small HMO (use class C4) under section 191 of the Act.
4. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proof in respect of LDC applications made under section 191 of the Act lies with the applicant and the relevant test of the evidence is on the balance of probability.
5. The Planning Practice Guidance (PPG) states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse

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

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether use of the appeal building as a use class C4 house in multiple occupation (HMO), as defined in the Town and Country Planning (Use Classes Order) 1987 (as amended), was instituted prior to 17 November 2024, which is the date when the Council's Article 4 Direction relating to the removal of permitted development rights in the area from use class C3 (dwellinghouse) to use class C4 (small HMO) as outlined in Class L of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), came into effect.

Reasons

7. On the 10 October 2023, the Council resolved to supplement an existing Article 4 Direction which removes permitted development rights to move from use class C3 to use class C4. Planning permission is required for such a change. The Article 4 Direction is applicable to the Pendlebury and Clifton ward which is where the appeal site is located and relates to the provision of any new use class C4 HMO after 17 November 2024.
8. The evidence is that prior approval has been granted by way of an application for a proposed single storey rear extension¹. A full plans application under the Building Regulations 2010 (as amended) was sent by the appellant to the Council and is dated 1 November 2024. In the full plans' application, it states that *'work will start: 04.11.2024 this being at least 2 working days after the date this notice was given'*. A letter was sent from the Council's Building Control service to the appellant confirming that the full plans application was valid on 8 November 2024².
9. Paragraph 046 of the PPG states that *'Article 4 directions cannot prevent development which has been commenced, or which has already been carried out'*. The appellant claims that use of the appeal building as a use class C4 HMO commenced prior to 17 November 2024. Such a claim is based on the submission of the above Building Regulations full plans application, as well as the submission of a number of undated WhatsApp images which appear to show work to a fireplace, the removal of kitchen units, the removal of bathroom fittings, the removal of shelving, other internal works, and the siting of a skip on the highway.
10. Section 56(1) of the Act defines what constitutes the commencement of development. It states, *'subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated— (a) if the development consists of the carrying out of operations, at the time when those operations are begun; (b) if the development consists of a change in use, at the time when the new use is instituted; (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b)'*.
11. The appellant has not submitted any objective or compelling evidence to demonstrate that the single storey rear extension was commenced prior to

¹ Prior approval reference No. NOT/2024/1461

² Building Regulations reference No. FP/24/0603

17 November 2024. The WhatsApp images appear to relate to internal works to the appeal building. I do not find that the Building Regulations full plans application evidence, or the provision of a skip on the highway, is sufficiently precise or unambiguous to demonstrate that the rear extension was begun prior to 17 November 2024. If the extension had begun at this time (i.e., a material operation as defined in section 56 of the Act), the sort of evidence that might have proven that it had begun before 17 November 2024 may have been dated photographs, Building Control officer dated inspection notes, witness statements, and/or statutory declarations.

12. Given the above, I therefore turn to consider section 56(1)(b) of the Act which relates to the actual use of the appeal property as a use class C4 HMO. In this regard, it defines commencement as being *'if the development consists of a change in use, at the time when the new use is instituted'*.
13. The WhatsApp images are not dated but, in any event, they appear to relate to internal 'rip out' works. Even if the 'rip out' works did relate to the proposed 'HMO conversion', as per the appellant's Building Regulations full plans application dated 1 November 2024, it is not the case that such works relate to the new use being begun or instituted. Indeed, section 56(2) of the Act states that *'development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out'*, and section 56(4)(e) of the Act states that material operation means *'any change in the use of any land which constitutes material development'*. Undertaking internal preparation and/or 'rip out' works do not in themselves amount to a change in the use of the land. The appellant has not provided precise and unambiguous evidence to demonstrate that the appeal property was in use, or capable of being used, as a class C4 HMO prior to 17 November 2024.
14. For the above reasons, and, on the balance of probability, I conclude that the evidence does not precisely and unambiguously demonstrate that use of the appeal property as a use class C4 HMO was instituted (or commenced) prior to 17 November 2024. Consequently, and given the Article 4 Direction that is in place for the area, use of the appeal property as a use class C4 HMO is not lawful. Planning permission is therefore required to use the appeal property as a use class C4 HMO.

Conclusion

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for an existing use as a small HMO (use class C4) 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 (as amended).

D Hartley

INSPECTOR