
Appeal Decision

Site visit made on 9 June 2025

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 June 2025

Appeal Ref: APP/U4230/X/24/3357216

158 Derby Road, Salford M5 5BB

- 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 Ms McKay on behalf of Hart Property Solutions Limited against the decision of Salford City Council.
 - The application ref PA/2024/1433, dated 23 September 2024, was refused by notice dated 6 December 2024.
 - 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 the conversion of C3 dwelling to C4 HMO.
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Decision

1. The appeal is dismissed.

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 25 November 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 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 (25 November 2018) and therefore had the benefit of planning permission.
6. There is no dispute the appeal property was not occupied as a C4 HMO prior to the Article 4 Direction coming into force. The crux of the matter is whether the works carried out to the property to convert it to a C4 HMO were completed to the extent that a material change in the use of the property from a dwelling to a C4 HMO had occurred before 25 November 2018. Simply commencing works to enable the change of use from the dwelling to a C4 HMO is not sufficient to benefit from the permitted development right under Class L(b). The development right only applies once the material change of use has occurred.
7. The Council refer to the Supreme Court judgment of *Welwyn*¹. The case concerned the granting of planning permission for a hay barn. Lord Mance considered the question of whether a change of use was required to come within section 171B(2) of the Town and Country Planning Act 1990 (the Act) and stated “The words “change of” use cannot however be ignored”. Lord Mance also expressed that a material change of use may take place when physical works are carried out for the proposed use in advance of the activity which constitutes the proposed use occurring. Therefore, a change of use could take place as a result of the physical works, but as Lord Mance expressed it is necessary “to look at the matter in the round and to ask what use the building has or of what use it is”. Also, “The physical state of these premises is very important, but it is not decisive. Actual or intended or attempted use is important but not decisive².” It is a matter of fact and degree as to when the change of use occurs.
8. The appellant provides a number of Assured Shorthold Tenancy Agreements. However, these post-date 25 November 2018 and therefore offer little in support of the appellant’s case.
9. The Development Agreement between the appellant and Amber Road Property Ltd pertaining to “...the refurbishment of 158 Derby Road, Salford, M5 5BB into a House in Multiple Occupancy (HMO)” sets out that the project start date is 12 November 2018 and the estimated completion date is 1 March 2019. Therefore, this suggests conversion works commenced prior to 25 November 2018, albeit only by approximately 2 weeks.
10. Photographs dated 16 November 2018 depict works being undertaken to the property. However, these works appear to be very early on in the conversion process. Given the extent of works carried out in these photographs, it seems reasonable to conclude that the conversion works were unlikely to have been substantially completed by 25 November 2018. Therefore, a material change of use of the property had not occurred from a C3 dwelling to a C4 HMO before 25 November 2018.
11. I acknowledge the application for an LDC³ granted by the Council in 2019 for a similar development at 48 Cannon Street, Eccles and the advice the Council

¹ *SSCLG v Welwyn Hatfield Borough Council* [2011] UKSC 15

² *Impey v SSE & Lake District SPB* [1981] JPL 363; [1984] P&CR 157

³ Council ref 19/73697/CLUD

previously had on their website. Whilst there are clear similarities with the appeal before me, I have determined the appeal on the basis of the correct application of case law and the GPDO.

12. I also acknowledge the appellant's builder went into liquidation before the conversion works were completed. However, this has had no bearing on my consideration of the appeal before me.
13. I find therefore, it has not been demonstrated that, on the balance of probabilities, the material change of use of the appeal property from a C3 dwelling to a C4 HMO took place before 25 November 2018. As planning permission has not been granted for the use of the appeal property for a C4 HMO at the time the LDC application was made, the use is unlawful.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development 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.

A Walker

INSPECTOR