
Appeal Decision

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 6th August 2025

Appeal Ref: APP/U4610/X/24/3358139

46 Winchester Street, Coventry CV1 5NU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Kushal Mane against the decision of Coventry City Council.
 - The application ref: PL/2024/0001754/LDCE, dated 17 September 2024, was refused by a notice dated 8 November 2024.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The existing use for which a LDC is sought is as a house in multiple occupation - Class C4.
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Decision

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

Applications for costs

2. An application for costs was made by Mr Kushal Mane against Coventry City Council. This application for costs is the subject of a separate decision.

Preliminary Matters

3. The description of the use for which the LDC is sought, in the banner heading above, is taken from the application form. The application form describes the existing use as '*Property has been operating as a HMO since 10th March 2023.*' It also states that the relevant Use Class of the Town and Country Planning (Use Classes) Order 1987 (UCO) is C4 - Houses in multiple occupation (Class C4). It is clear therefore that the LDC is sought for the use as a house in multiple occupation falling within Class C4. There is reference in the evidence before me to 'substantial changes' that have been undertaken to the property to convert it into a 5-bed property. However, the LDC before me relates to an existing use and not operational development and I have determined the appeal on this basis.
4. Having considered the evidence submitted, the main considerations in this case, and the particular matters in dispute, I am satisfied that no injustice would be caused to any party in determining the appeal without a site visit. The views of the main parties were, however, sought on this matter before my determination of the appeal. No objections to this were raised.
5. Class L(b) of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) states that development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the UCO, to a use falling within Class C4 (houses in multiple occupation) of that Schedule is permitted development. Class C4 is defined, within the UCO, as use of a dwelling by not more than six residents

as a 'house in multiple occupation' (HMO). The interpretation of Class C4 within the UCO states that *'for the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004'*.

6. A local planning authority may make a direction removing a permitted development right under Article 4(1) of the GPDO (an Article 4 Direction). The Council has stated that on 30 September 2023 an Article 4 Direction came into force in the Council's area, including the appeal site which removed permitted development rights relating to Class L(b) of the GPDO. Thus, after 30 September 2023, if a property was not already a lawful Class C4 HMO, express planning permission would be required to make a material change of use of a building from a use as a dwellinghouse to a use as a Class C4 HMO.
7. The appeal property is a terraced house in a row of similar properties in a residential street. The submitted floor plans indicate that it contains 2 en-suite bedrooms on the first floor, 2 ensuite bedrooms on the second floor and a kitchen, dining/lounge, WC and an ensuite bedroom on the ground floor.

Main Issue

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

Reasons

9. In order for an LDC to be granted under section 191 of the 1990 Act, the burden of proof is with the appellant and the appropriate test of the evidence is the balance of probabilities. The onus is firmly on the appellant to show that the use as a Class C4 HMO was lawful at the date the LDC application was made, 17 September 2024. 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 his evidence alone is sufficiently precise and unambiguous.
10. Section 191(2) of the 1990 Act states that *'For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.'* In this case there is no evidence before me to indicate that there were any requirements of an enforcement notice in force at the date of the LDC application..
11. The appellant maintains that prior to 30 September 2023 the appeal property was in use as a Class C4 HMO. The Council considers that insufficient information has been submitted to establish, on the balance of probability, that the property was occupied as a Class C4 HMO before 30 September 2023, or that the use as a Class C4 HMO with 5 occupants has operated, without abandonment, for a 10-year period.

12. I consider that whether the use of the property as a Class C4 HMO is lawful turns on 2 issues. Firstly, whether through the passage of time the use as a Class C4 HMO would have become immune from enforcement action. And, secondly as the Council brought in the Article 4 Direction on 30 September 2023, whether the use of the property had changed to a Class C4 HMO use prior to that date and continued in that use until the date of the LDC application.
13. There is ambiguity as to when the appellant is stating the existing use began as the LDC application form states that the use began on the 10 March 2023, the planning statement submitted with the LDC application states that the use began in April 2022 and the grounds of appeal indicate that the property was converted into a Class C4 HMO on 21 June 2021. Nevertheless, even if I took the earliest date the use as a Class C4 HMO began less than 10 years prior to the date of the LDC application therefore that use has not been shown to be immune from enforcement action on the basis of the passage of time.
14. There is no dispute that operational development has occurred at the appeal property to enable it to have 5 ensuite bedrooms instead of 2 bedrooms. Moreover, a final certificate for building control purposes dated 2 June 2021 states that the work '*internal alterations including all new upvc windows and doors and loft conversion to create 5 bedroom HMO*' has been completed. However, that certificate only provides evidence that the property was physically capable of being used/occupied as a '*5 bedroom HMO*' at that time.
15. A licence for a HMO, under the Housing Act, at the appeal property was granted on 10 March 2023. That licence authorises no more than 5 persons from 5 households to occupy the property. I acknowledge that to enable the licence to be granted that the property would have been inspected to ensure it met licencing requirements.
16. An assured shorthold tenancy agreement (AST) relating to Room 2 at the property has been submitted. This relates to a period of 11 months from 21 January 2023. I acknowledge that the logo on the front of the AST relates to Karnani but the landlord is identified as Househat UK limited within the AST. The AST itself at section 9 is not signed but the deposit section at F appears to be digitally signed as is the supporting documents checklist.
17. A number of what appear to be summary documents associated with ASTs have also been submitted. For Room 1 the summary document indicates that the tenancy commences on 25 August 2023 to and including 24 May 2024 and the contract is digitally signed on 1 September 2023. The summary document for Room 3 indicates that it relates to a tenancy commencing on 25 August 2023 to 24 August 2024. It is digitally signed on 3 September 2023. In relation to Room 4 the summary document relates to a tenancy commencing on 4 March 2022 to 3 March 2024. It is digitally signed on 7 and 9 February 2023. The summary document supplied for Room 5 relates to a tenancy commencing on 13 May 2023 to 12 November 2023. It is digitally signed on the 12 and 16 May 2023.
18. The signatures relating to Rooms 1 and 3 are dated a few days after the tenancies on those rooms began. In my experience, this can commonly occur as tenants may agree a tenancy start date and may not be able to move into and sign their tenancy on that start date. However, the signature date for the tenancy on Room 4 is 11 months after the tenancy is stated to have commenced. It may be that

there is a typographical error, and the tenancy commenced in 2023 rather than 2022. Nevertheless, this means that there is ambiguity with regard to the length of that tenancy and the weight I can attribute to that document is therefore modest.

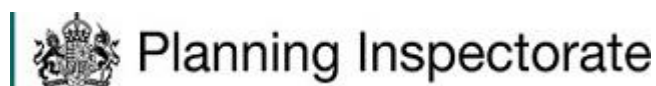
19. There are also copies of bank statements dating from June, July and August 2023 which show money being deposited from Househat with a reference of 46 WS on each of those months. I have no reason to dispute that those deposits are rent payments relating to 46 Winchester Street.
20. I acknowledge that the majority of the documents relating to the tenancy agreements are not the full AST documentation, but they appear to be summary documents that set out the basic terms of the tenancy. The Room 2 AST is not signed in section 9 and there is ambiguity with regard to the tenancy period for Room 4. Nonetheless, in my judgement, when considered holistically the evidence before me indicates with sufficient precision and unambiguity, on the balance of probabilities, that the appeal property was more likely than not in use as a Class C4 HMO prior to 30 September 2023. Even if that property was only occupied by 2, 3 or 4 people on the 30 September 2023 that does not mean that the property was not in use as a Class C4 HMO even though it may be described as a '5 person small HMO'. Moreover, there is no evidence before me to contradict or otherwise make the appellant's version of events less than probable that the use as a Class C4 HMO began prior to 30 September 2023.
21. The submitted tenancy documentation does not cover the date of the LDC application. However, given that one of the tenancy agreements ended less than a month before the LDC application it is more likely than not that the use as a Class C4 HMO continued until 17 September 2024. Additionally, there is no evidence before me to indicate that the use of the property, as outlined in the evidence before me, would not fall within Class C4 as defined in the UCO and section 254 of the Housing Act.
22. Taking into account all of the above, when considered holistically the submitted evidence indicates with sufficient precision and unambiguity that it is more likely than not that the appeal property was in use as a house in multiple occupation - Class C4 prior to 30 September 2023, the date of the Article 4 Direction, and that use continued until 17 September 2024, the date of the LDC application. As such, as a matter of fact and degree and on the balance of probabilities the use as a house in multiple occupation - Class C4, when begun, was development permitted by Class L(b) of Part 3 of Schedule 2 of the GPDO and did not require the benefit of express planning permission.

Conclusion

23. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a LDC for the use as a house in multiple occupation - Class C4 is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

D Boffin

INSPECTOR



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

IT IS HEREBY CERTIFIED that on 17 September 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black 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:

When considered holistically the submitted evidence indicates with sufficient precision and unambiguity that it is more likely than not that the appeal property was in use as a house in multiple occupation falling within Class C4 of the Town and Country Planning (Use Classes) Order 1987, prior to 30 September 2023, the date of the Article 4 Direction, and that use continued until 17 September 2024. As such, as a matter of fact and degree and on the balance of probabilities the use as a house in multiple occupation falling within Class C4, when begun, was development permitted by Class L(b) of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 and did not require the benefit of express planning permission.

Signed

D Boffin

Inspector

Date: 6th August 2025

Reference: APP/U4610/X/24/3358139

First Schedule

Use as a House in Multiple Occupation - Class C4 as outlined in the supporting documentation to appeal ref: APP/U4610/X/24/3358139

Second Schedule

Land at 46 Winchester Street, Coventry CV1 5NU

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 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 6th August 2025

by D Boffin

Land at: 46 Winchester Street, Coventry CV1 5NU

Reference: APP/U4610/X/24/3358139

Scale: Not to Scale

