



Appeal Decision

Site visit made on 11 September 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 23rd September 2025

APP/Z4310/X/25/3358393

20 Weardale Road, Liverpool L15 5AU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by Liverpool City Council to grant a certificate of lawful use or development.
- The appeal was made by Mrs Nicola Dudley.
- The application, dated 23 October 2024, was validated on 24 October 2024 - reference 24LE/2772. It was refused by a notice dated 28 November 2024.
- The Application for a Certificate of Existing Lawful Development for a House in Multiple Occupation for 3 - 6 persons (Use Class C4) was made under section 191(1)(a) of the Act in respect of the property at No. 20 Weardale Road, Liverpool L15 5AU.

Summary of decision: The appeal is dismissed.

Appeal property and application

1. The appeal property, No. 20 Weardale Road, is a mid-terrace house in a residential road of similar properties in the Wavertree area of Liverpool between Wavertree Sports Park and Sefton Park.
2. The application by Mrs Nicola Dudley stated that on 17 July 2018, the use of the dwelling at No. 20 Weardale Road as a House in Multiple Occupation for 3 - 6 persons, (Use Class C4 - The Town and Country Planning (Use Classes) Order 1987), began. It continued to the date of the application, 23 October 2023.

Background

3. S.191(1) of the Act provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; they may make an application for the purpose to the Local Planning Authority. Where that application is refused or deemed to have been refused and an appeal made, the burden of proof to show that the decision was not well founded lies with the appellant.
4. The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 came into force on 6 April 2010. It introduced a new Use Class (houses in multiple occupation, Use Class C4) - Article 2(4). It covered use of a dwellinghouse as a house in multiple occupation as defined in s.254 of the Housing Act 2004. A dwelling that falls within Use Class C4 is a small shared house occupied by between 3 and 6 unrelated individuals as their only or main residence, who share basic amenities such as a kitchen or bathroom. Order amendment, (No.2, SI 2010/2134), meant that from 1 October 2010 a change of use from a dwelling (C3) use to use as a House in Multiple Occupation (HMO) (C4) does not require planning permission.
5. However, a Liverpool City Council Article 4 Direction made under the General Permitted Development Order came into force on 19 July 2018 for The Dales area of Liverpool, including the application address. The Direction removed permitted

development rights for conversion from a Use Class C3 dwellinghouse to a Use Class C4 small HMO. Dwellings that were lawful 3 – 6 person HMOs before 19 July 2018 would not be caught by the Direction.

6. In the present instance the Appellant Mrs Dudley needed to show that a change of use of No. 20 Weardale Road from a C3 dwellinghouse use to use as a 3 – 6 person C4 HMO took place before 19 July 2018 and did not revert to a lawful C3 dwellinghouse use up to the date of application for a lawful C4 use certificate. The test of the evidence for the use is made on the balance of probabilities. The burden of proof lies with the applicant.

Considerations

7. A Private Rented Property Licence for No. 20 Weardale Road, Liverpool, L15 5AU to Licence holder Mr Olaf Dudley under s.85 of the Housing Act 2004 was granted on 17 July 2018. That was 2 days before the coming into effect of the Article 4 Direction restriction.
8. Copies of 7 Assured Shorthold Tenancy Agreements were submitted in support of the application. The first agreement, starting 1 September 2018, was for a period of 10 months. This tenancy agreement was signed by the parties on dates between 12 September 2018 and 3 October 2018. Copies of subsequent annual agreements, mostly for 12 month periods, starting from 1 July, were provided. The last agreement was from 1 August 2024 for the period to 30 June 2025. All agreements were in respect of 3 tenants.
9. Although the provision of the Private Rented Property Licence showed a clear intention to rent out the dwelling at No. 20 just before the Article 4 Direction was made, and whilst tenancy agreements showed a continuous use of the dwelling at No. 20 as an HMO for 3 persons from 2018, the information provided did not, in my view, show that the change of use of No. 20 from a C3 dwelling use to a 3 – 6 persons HMO C4 use had occurred before 19 July 2018.
10. This question, of when the change of use from a C3 to a C4 use can be shown to have taken place, was equitably considered by the Council. In the Supreme Court judgment in *Secretary of State for Communities and Local Government and another (Respondents) v Welwyn Hatfield Borough Council (Appellant)* [2011] UKSC 15, Lord Mance referred to the decision in *Impey v Secretary of State for the Environment* (1984) 47 P & CR 157 where Donaldson LJ said: “*Change of use to residential development can take place before the premises are used in the ordinary and accepted sense of the word, and [counsel] gives by way of example cases where operations are undertaken to convert premises for residential use and they are then put on the market as being available for letting. Nobody is using those premises in the ordinary connotation of the term, because they are empty, but there has plainly, on those facts, been a change of use.*”. Obviously dependent upon the circumstances of the individual case, although intent may be insufficient, alterations to provide for a new use, rather than an actual new use, may be sufficient to demonstrate that a change of use had occurred before that actual use started.
11. Further, in *Impey* Donaldson LJ said: “*The question arises as to how much earlier there can be a change of use.*”. Again, following this, the decision maker has to consider the question in the particular circumstances before them. My view here, also bearing in mind that the burden of proof lies with an appellant and that the evidence is to be precise and unambiguous, I consider the evidence before me in this application of a lawful use of No. 20 Weardale Road as a House of Multiple

Occupation for 3 - 6 persons, (Use Class C4), having started before 19 July 2018 was insufficient for me to issue a certificate of lawfulness.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development on the application made for the existing use as a House in Multiple Occupation for 3 - 6 persons (Use Class C4) under section 191(1)(a) of the Act in respect of the property at No. 20 Weardale Road, Liverpool L15 5AU was well founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

FORMAL DECISION

13. The appeal is dismissed.

John Whalley

INSPECTOR