



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/24/3357153

98 Garmoyle Road, Liverpool L15 3JH

- 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 Annton Properties Limited.
- The application, reference 24LE/2230, was validated 29 August 2024. It was refused by a notice dated 22 October 2024.
- The Application for a Certificate of Existing Lawful Development, (LDC), 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. 98 Garmoyle Road, Liverpool L15 3JH.

Summary of decision: The appeal is allowed and a certificate of lawful use is issued in the terms set out below in the Formal Decision.

Appeal property and application

1. The appeal property, No. 98 Garmoyle Road, is a mid-terrace house with accommodation on 3 floors in a residential road of similar properties in the Wavertree area of Liverpool.
2. The internal layout of No. 98 comprises a lounge, bedroom, kitchen and small utility room on the ground floor; 4 bedrooms and a shower/w.c. room on the first floor; a bedroom, a study/studio and a shower/w.c. room on the second floor.
3. The application, dated 23 August 2024 made by Annton Properties Limited, was that the use of the property at No. 98 Garmoyle Road as a Small, (C4), House in Multiple Occupation, (HMO), (Town and Country (Use Classes) Order 1987 as amended), (the Order), had become lawful before 23 August 2024.

Legislative background

4. 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.
5. Communities and Local Government Circular 08/2010 gave guidance on planning regulations, in particular on changes of use for dwelling houses and houses in multiple occupation following changes to legislation in April and October 2010, (SI 2010 No. 653). Dwellinghouses and small houses in multiple occupation were then covered by classes in the Use Classes Order:

Class C3: Dwellinghouses – class formed of 3 parts:

C3(a): those living together as a single household as defined by the Housing Act 2004, (basically a 'family');

C3(b): those living together as a single household and receiving care, and

C3(c): those living together as a single household who do not fall within the C4 definition of a house in multiple occupation.

Class C4: Houses in multiple occupation, (3 - 6 occupants) – C4 class covers small shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities.

Large houses in multiple occupation, (those with more than 6 people sharing) – are unclassified by the Use Classes Order. They are described as being sui generis, (of their own kind). A planning application will be required for a change of use from a dwellinghouse to a large house in multiple occupation or from a Class C4 house in multiple occupation to a large house in multiple occupation where a material change of use is considered to have taken place.

6. A Liverpool City Council Article 4 direction, (Town and Country Planning (General Permitted Development) (England) Order 2015), for the Dales area that came into force on 19 July 2018 removed permitted development rights for conversion from a C3 dwellinghouse to a C4 small HMO.

History

7. The Appellants said they bought No. 98 Garmoyle Road in 2014. It had then been occupied as an HMO by students. Assured Shorthold Tenancy Agreements from July 2013 to the present were said to show the property used as an HMO for more than 10 years. During the period 1 July 2013 to 30 June 2024, the property had been occupied by 5, 6 and 7 tenants.
8. The Appellants said varied occupancy numbers at No. 98 had caused planning status problems. The current application was the 4th made to Liverpool City Council since 28 February 2024.
9. First Application - 24LE/0544; was for a Certificate of lawfulness for an existing use or development as a 7-Bed House in Multiple occupation (HMO) – Sui Generis. It was refused on 5 April 2024, the Council being not satisfied the property was let to 7 persons throughout the requisite period.
10. Second Application - 24F/1068; was a planning application for a change of use of No. 98 from a 3 - 6 person HMO, (Use Class C4), to a 7-bed HMO. It was refused on 4 June 2024 for reasons that included an assessed inadequate communal lounge space contrary to Local Plan Policy H10 and because bedroom 6 in the loft was lit only by a rooflight.
11. Third Application - 24F/1562; was a planning application for a change of use to a 3 - 6 person HMO, (Use Class C4). The application was, at the time of the current appeal, undecided, but understood to be recommended for refusal, (policy H10).

Case for the Appellant

12. The Appellants obtained a legal view, (dated 24 July 2024 – predating the current LDC application by 4 days). It recommended that a new LDC application in respect of No. 98 Garmoyle Road for a change of use from a C3 dwelling to a Small (C4) HMO be made.

13. The legal view said a Small (C4) HMO is occupied by not more than 6 people; a Large (Sui Generis) HMO is occupied by 7 or more people; a change of use occurs when you move from one use class to another. Although there was ample evidence to show that No. 98 had not been in use as a family home, (C3 use), for many years, there was concern that because the number of occupiers had 'oscillated' over time between 6 and 7, the Council might argue that (i) the use class had correspondingly oscillated between Small (C4) HMO and Large (Sui Generis) HMO; but (ii) neither change of use had been continuous for the required period of 10 years; and (iii) as no other use had been established, No. 98 therefore remained a C3 dwelling. The legal opinion said it might be hoped the Council would be pragmatic and view the time periods during which No. 98 had 7 occupants as not being a significant interruption or a material change from the C4 use.
14. The evidence provided to Liverpool City Council, showing that No. 98 had been in use as an HMO since 1 July 2013, was claimed to be beyond dispute. It was accepted, however, that the number of occupiers had fluctuated over the 11 tenancy periods since 2013. The question that arose was whether adding one person to an HMO, increasing occupancy from 6 to 7, should automatically result in a material change of use.
15. The transition from one use class to another was not in itself enough to indicate that a material change of use has occurred. A change of use could only be material by bringing about a definable change in the character of the main use of the land. There would have to be some significant difference in the character of the activities from what had gone on previously. Individually, the intensification of those activities would likely not result in a material change in the character of the use of the property. The periods of tenancy when the property was occupied by 7 tenants did not have an impact on the planning position.

Case for the Council

16. No. 98 Garmoyle Road had not been in continuous use as a Class C4 HMO for more than 4 years since the Article 4 Direction for the Dales area came into effect. Nor was it a Class C4 HMO when the Direction was applied because of the oscillation between the C4 HMO and Sui Generis HMO uses.
17. No student exemption Council Tax records had been submitted with the application. Also, the Statutory Declarations had limitations. Even if the Appellant's argument that there was no material change between a Class C4 5/6 person use and a Sui Generis 7 person HMO use was accepted, evidence supporting the application was lacking.
18. National policy guidance required evidence to be precise and unambiguous. The application did not provide unambiguous and precise evidence that, on the balance of probabilities, the site had been used as a 5/6/7 person HMO from the time of the Article 4 Direction's introduction on 19 July 2018 up to the date of the application with no interruption in the use, nor that the site was used as a 5/6/7 person HMO for 4 continuous years prior to the date of the application. As with appeal ref. APP/Z4310/X/23/3325954 at 66 Rooms, Kensington, a change from a 6 to 7 person HMO at No. 98 Garmoyle Road the intensified activities within the property resulted in a material change to the character of the use.

Inspector's considerations

19. The Application now before me was for a Certificate of Existing Lawful Development, (LDC), for a House in Multiple Occupation for 3 - 6 persons (Use Class C4),

(s.191(1)(a) of the Act), in respect of the property at No. 98 Garmoyle Road. S.55(2)(f) says the uses of land shall not be taken for the purposes of the Act to involve development of the land in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, ..., for any other purpose of the same class. That is, no development is involved if the new use and the former use are both within the same specified class.

20. To determine lawfulness of the use of No. 98 Gargoyle Road, the most relevant dates are:

6 April 2010 – date C3 change of use to C4 3 - 6 person HMO became a permitted development right:

2014 - purchase of No. 98 by Applicants, (approx. June 2014 – ref: Appellants' Solicitor letter):

19 July 2018 – Article 4 direction, Dales area, (removal of permitted development right for conversion of C3 dwelling to C4 small HMO).

21. The tenancy agreement evidence shows that No. 98 Gargoyle Road was in an HMO use by 6 or fewer persons at times during the period between 6 April 2010, when a change of use from a C3 dwelling use to a C4 (3 - 6 occupants) HMO use was permitted, and 19 July 2018 when the Article 4 direction restricting permitted development rights came into force. For instance, an agreement dated 24 April 2014 for 6 tenants to occupy No. 98 from 1 July 2013 to 30 June 2014 and another dated 27 July 2014 for 6 tenants to occupy No. 98 from 1 September 2014 to 30 June 2015, appear to show, on the balance of probabilities, that the assumed single dwellinghouse C3 lawful use had changed under permitted development rights to a lawful C4 (3 - 6 occupants) HMO use. If that change of use from a lawful single dwelling use to a C4 HMO use predated the coming into effect of the SI 2010 No. 653 Order of 6 April 2010, a then unlawful change of use would have become lawful by virtue of the April Order concessions. That HMO lawful use would have durability, not as in the case of an unlawful use requiring the passage of time in a continuing unlawful use to achieve lawfulness.
22. Assuming the 3 - 6 occupant HMO use of No. 98 had thus become lawful, it might be queried as to whether that lawfulness had subsequently been lost by a reversion to a lawful single dwelling C3 use or replaced by any other lawful use. However, there was no suggestion that No. 98 had been used as a single C3 dwelling at any time in the periods under consideration in this application. There were no suggestions that there had been a reversion to a lawful C3 dwelling use or that any other lawful use had been implemented.
23. As to a tenancy agreement drawn up for occupation of No. 98 by 7 persons, the Appellants said it "oscillated" by being occupied by 6 or 7 persons. When occupied by 7 persons, No. 98 would have been in a large 7 person HMO use. It was said that a change from a C4 3 - 6 occupant HMO use to a large 7 person HMO use might not have amounted to an unlawful material change of use. There are circumstances where that might be so. But in the present instance, I consider that the property, occupied by 7 persons, would have become unreasonably overcrowded, the facilities already being fully utilised by 6 persons and here the 7th person would occupy a room with only a roof light. I consider the change of occupancy from 5 or 6 persons to occupancy by 7 persons would have materially and adversely affected the residential character of the property. Use of No. 98 as a large 7 person HMO would have required planning permission. That consideration may be somewhat otiose however, as a reversion from an unlawful 7 person large HMO to the assessed lawful C4 3 - 6 occupant HMO use would be permitted by the same considerations as apply in s.57(4) of the Act, that, where an unlawful use starts, planning permission is not

required to revert to the previous lawful use. In my view, the change of use of No. 98 from a C3 use to a 3 – 6 persons HMO, permitted by legislation changes made in 2010 having become a lawful use, endured.

Conclusion

24. 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. 98 Garmoyle Road, Liverpool L15 3JH was not well founded and that the appeal should succeed. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as is a plan submitted with the application.

John Whalley

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 (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 28 August 2024 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, was lawful within the meaning of section 191(1)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use of the property from a C3 dwelling use to a lawful C4 HMO use was permitted by the General Permitted Development Order Amendment from April 2010.

John Whalley

INSPECTOR

Date: 23rd September 2025

Reference: APP/Z4310/X/24/3357153

First Schedule

Use of the property as a House of Multiple Occupation for 3 - 6 persons, (Use Class C4)

Second Schedule

No. 98 Garmoyle Road, Liverpool L15 3JH

IMPORTANT NOTES OVERLEAF
NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule was lawful on the certified date and thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 191(6) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Lawful Development Certificate Plan

Appeal reference: APP/Z4310/X/24/3357153 Date: 23rd September 2025

No. 98 Garmoyle Road, Liverpool L15 3JH



Plan attached to the Lawful Development Certificate - No scale

John Whalley

INSPECTOR