

Appeal Decision

Site visit made on 7 October 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 15th October 2025

APP/Z4310/X/25/3360219

85 Albert Edward Road, Liverpool L7 8RZ

- 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 Mr Tanzeel Rehman.
- The application was dated 30 December 2024 and validated on 30 December 2024 under reference 24LE/3409. It was refused by a notice dated 5 February 2025.
- 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. 85 Albert Edward Road, Liverpool L7 8RZ.

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. 85 Albert Edward Road, is a two-storey mid-terraced residential property in the Kensington Fields Conservation Area, Liverpool. The application plans show an internal layout with a living room, a dining room and kitchen on the ground floor and with 3 bedrooms and a bathroom on the first floor.
2. The application by Mr Tanzeel Rehman claimed that the property, No. 85 Albert Edward Road, was used as a small HMO and had been since at least February 2018.

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 (General Permitted Development) (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. An 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 covering an area including the application property

came into force on 17 June 2021. 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 17 June 2021 would not be caught by the Direction. It would need to be shown that the C4 use was operational, and the property occupied as an HMO prior to the Article 4 direction coming into force.

6. Schedule 2, Part 3, Class L of the GDPO 2015 (as amended) sets out a permitted change from a use falling within C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (HMOs) of that Schedule.
7. The Appellant, Mr Tanzeel Rehman, said he had submitted assured shorthold tenancy agreements showing continuous use of No. 85 Albert Edward Road for 3 or more occupants from July 2020 to the present. They were backed up by rental statements from the managing agent and by bank statements showing amounts paid in. The evidence was supported by a statutory declaration. The Council had not produced any evidence that the property was not used as an HMO.
8. The Council said evidence was required to demonstrate that the dwelling at No. 85 was in an HMO use before 17 June 2021. It also needed to be shown that the use of the property had not lapsed back to a C3 family home since the Article 4 Direction came into force, up to the date of the application, 30 December 2024. The test of the evidence for the use was on the balance of probabilities. The burden of proof lay with the Applicant.

Considerations

9. Copies of a number of Assured Shorthold Tenancy Agreements, (ASTAs), were submitted in support of the application. The first agreement, although signed on 9 December 2019, was for a period from to 1 July 2020 to 30 June 2021 in respect of occupation by 4 tenants at No. 85 Albert Edward Road. Copies of subsequent consecutive annual agreements, for 12 month periods from 1 July to 30 June the following year for 3 or 4 persons were provided. The last agreement was from 1 August 2024 for the period to 30 June 2025.
10. A Statutory Declaration signed on 18 November 2024 by the owner of No. 85 was said to confirm the property was laid out and occupied as an HMO. All the above, including bank statements said to relate to rent payments, was considered by the Council who opined there was some evidence the property had been in use as an HMO before and perhaps during the time the Article 4 applied. They said, however, that the evidence submitted did not adequately and irrefutably demonstrate the premises had been used as a 3 - 4 bed HMO continuously after 17 June 2021 when the Article 4 direction came into force, to the date of the application. They concluded an LDC could not be issued.
11. Effectively, the Council applied 2 tests. The first was whether a change of use of No. 85 Albert Edward Road from an assumed C3 family residential use to a lawful C4 3 – 4 person HMO use took place before 17 June 2021. Second, if that change of use took place, did No. 85 remain in that use up to the date of the LDC application made on 30 December 2024?
12. In my view, the first part of the test is satisfied. I consider that the evidence submitted by the Appellant shows, on the balance of probabilities, that No. 85 Albert Edward Road was in use as a 3 – 4 person HMO before 17 June 2021. Before the bringing into effect the Article 4 Direction, the start of the use of a family dwelling as a 3 – 6 persons HMO would have been lawful. It would not have needed that use

to exist for a period of time to gain that lawfulness. As a change of use from an assumed C3 residential use to a C4 HMO use was permitted by Schedule 2, Part 3, Class L of the GDPO 2015, the 3 – 4 person HMO use would have been development permitted by the Order. Thereafter, and following the application of the Article 4 Order, the HMO use would have remained lawful, unless for example, superseded by a new material use.

13. It is somewhat unclear as to whether the Council wanted the Appellant to prove an unbroken continuity of the HMO lawful use. But a lawful use does not need to be continuous, unlike an unlawful use that must be continuous during the enforcement period as part of the process to gain lawfulness. However, the Council were concerned it had not been shown there had not been a possible return to a C3 family home use, a new lawful use that would have supplanted the HMO use. In my view, such proof was unnecessary. In that circumstance, where there is an ongoing lawful use, even if temporarily suspended, it would be for others to show that lawfulness had been lost. No such evidence was produced.

Conclusion

14. 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. 85 Albert Edward Road, Liverpool L7 8RZ 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 30 December 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 Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010.

John Whalley

INSPECTOR

Date: 15th October 2025

Reference: APP/Z4310/X/25/3360219

First Schedule

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

Second Schedule

No. 85 Albert Edward Road, Liverpool L7 8RZ

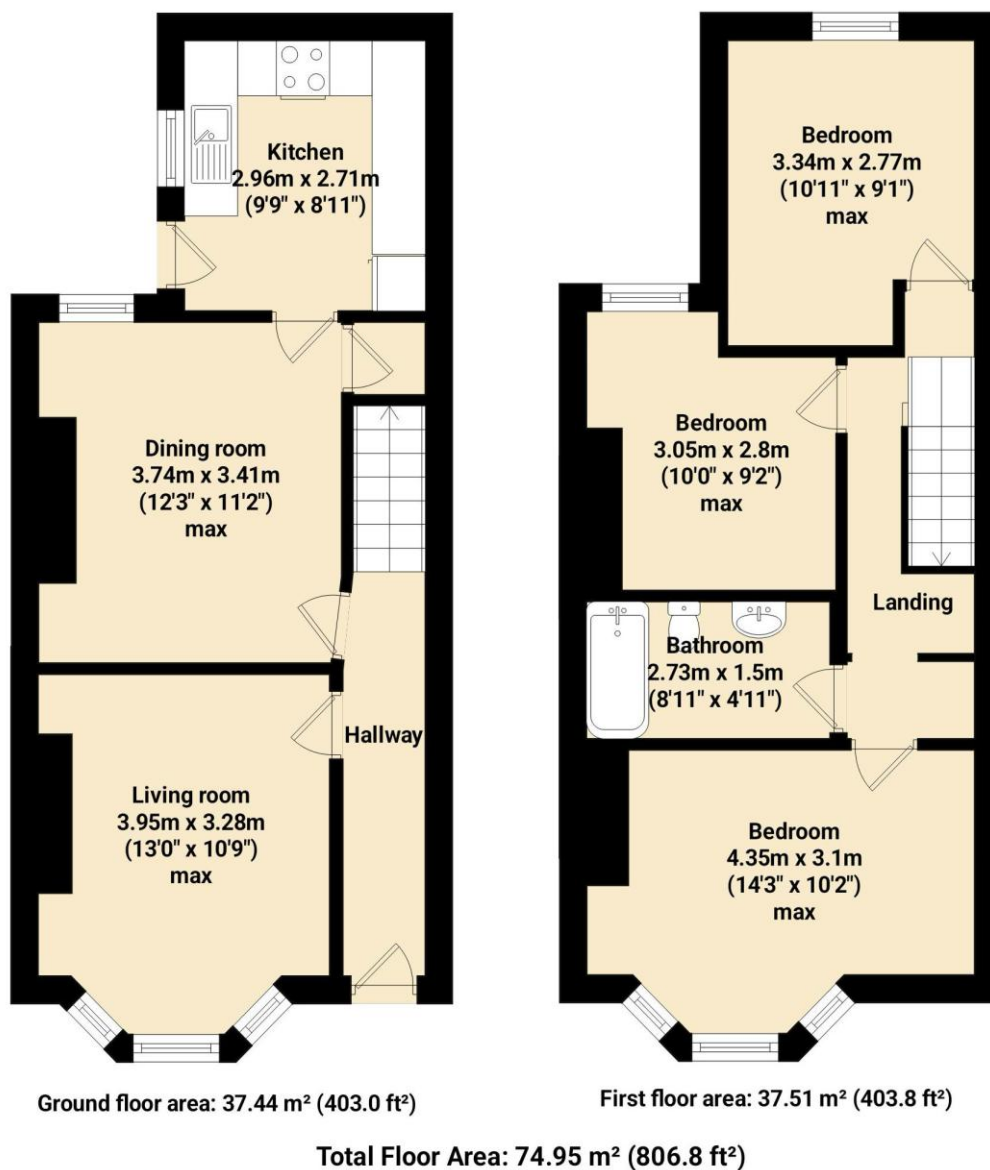
IMPORTANT NOTES OVERLEAF
NOTES

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/25/3360219 Date: 15th October 2025

No. 85 Albert Edward Road, Liverpool L7 8RZ – floor layout plans



Plan attached to the Lawful Development Certificate – Dimensions as shown

John Whalley

INSPECTOR