

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/25/3360128

41 Cretan Road, Liverpool L15 0HR

- 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 8 January 2025 and validated on 8 January 2025 under reference 245LE/0035. It was refused by a notice dated 5 February 2025.
- The Application for a Certificate of Existing Lawful Development, (LDC) for existing use of the property as a small House in Multiple Occupation, (HMO) (Use Class C4) was made under section 191(1)(a) of the Act in respect of the property at No. 41 Cretan Road, Liverpool L15 0HR.

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.

Costs application

1. Liverpool City Council applied for an award of costs against the Appellant, Mr Tanzeel Rehman. That application is considered in a separate decision.

Appeal property and application

2. The appeal property, No. 41 Cretan Road, is a two-storey mid-terraced residential property within the Smithdown Ward of Liverpool.
3. The internal layout of the ground floor of No. 41 was shown to consist of a living room, a communal lounge, a bedroom and a kitchen. There were said to be 3 bedrooms and a bathroom on the first floor.
4. The Applicant, Mr Tanzeel Rehman, whose purchase of the property was completed on 24 January 2025, asserted that No. 41 Cretan Road was, and had been, used as a small HMO since at least 20 August 2018.

Background

5. 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.
6. 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. 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.

7. 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.

Considerations

8. Liverpool City Council said Mr Tanzeel Rehman needed to show that No. 41 Cretan Road was in an HMO use before 17 June 2021 and that it had not reverted to a C3 family home use since the Article 4 Direction came into force, up until the date of the application for an LDC, 8 January 2025. They concluded that, notwithstanding the submitted Statutory Declaration, the evidence submitted did not adequately demonstrate the premises had been used as a minimum 3-bed HMO continuously before, on and after 17 June 2021 to the date of the application, 8 January 2025. The Appellant had to show that if No. 41 Cretan Road was in an HMO use before 17 June 2021, it had not reverted to a C3 family home use since then. Otherwise, reversion to a lawful C3 family home use would have meant the lawful HMO use had been replaced. The Council said the submitted tenancy agreements did not cover the vital timeframe of just before, during and just after the Article 4 Direction came into effect on 17 June 2021. Also, there was a gap between 1 July 2024 and 8 January 2025 of about 6 months where the property could have reverted back to a single family dwelling.
9. The Appellant produced a statutory declaration dated 10 January 2025 made by the previous owner of No. 41 Cretan Road. He had purchased the property on 20 August 2018. At that time the property was let to students and used as a small HMO. Since owning the property, it had only been used as a small HMO with no other use.
10. The evidence of the declaration, signed tenancy agreements for 3 individuals and the bank statements showing rents paid for 10 months from September 2019 to June 2020 show that, at least at those times, No. 41 was rented, apparently by students, as a 3 person HMO. As that period was between the Order amendment coming into effect in October 2010 and the Article 4 Direction coming into force on 17 June 2021, No. 41 Cretan Road was in a lawful use as a 3 – 6 person HMO. In my view, that lawful use persisted, even through periods of non-occupancy. As the HMO use was lawful, it was not necessary that the property be occupied without any significant breaks for the lawful use to be retained. That is unlike the situation where an unlawful use needs to remain in being without a significant break or breaks throughout the enforcement period to ultimately gain lawfulness by the passage of time.
11. It was said the No. 41 property was vacant for the duration of the 2020 - 2021 academic year, said to be because of COVID-19. It remained vacant and had no other use until the start of the 2021-2022 tenancy. The property had been vacant since the last tenancy ended on 30 June 2024 in preparation for sale. At the time of signing the statutory declaration the property remained vacant.

12. Lawful use rights may be lost in several ways, but include loss by a material change of use to some other use taking place. While service of an enforcement notice may allow a landowner to revert to the previous lawful use, (s.57(4) of the Act), in the absence of such service, following *Stone & Stone v SSCLG & Cornwall Council* [2014] EWHC 1456 (Admin), an existing lawful use is capable of being extinguished by the creation of a new planning unit in respect of the land in question.
13. As set out in para. 8 above, it was the Council's view that the Appellant had to show that if No. 41 Cretan Road was in an HMO use before 17 June 2021, it had not reverted to a C3 family home use since then. In the case of an ongoing lawful use, however, I consider that, unless it can be shown that the lawful HMO use could have been lost by being superseded by a reversion to a lawful C3 use, or by another material change of use to an unlawful use, the lawful HMO use would have endured.
14. However, the Council produced no evidence to show a reversion to a C3 dwelling use. Government advice is that in the case of applications for an existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability; Para: 006 Reference ID: 17c-006-20140306.
15. It was held in *Panton & Farmer v SSETR & Vale Horse DC* [1999] JPL 461 that a use may be regarded as 'existing' and lawful even if it is dormant or inactive, for example, following the death of the landowner. However, the use must have become lawful before it fell dormant, and lawful use rights must not have been lost. That seems to me to be the situation here. The evidence from the statutory declaration points to No. 41 Cretan Road being in use as a small HMO before 17 June 2021 and that no superseding use or uses occurred to the LDC application date, 8 January 2025.

Conclusion

16. 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. 41 Cretan Road, Liverpool L15 0HR was not well founded and that the appeal should succeed. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

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 8 January 2025 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

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First Schedule

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

Second Schedule

No. 41 Cretan Road, Liverpool L15 0HR

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

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