



## Appeal Decision

Site visit made on 7 October 2025

**by John Whalley**

**an Inspector appointed by the Secretary of State**

Decision date: 15<sup>th</sup> October 2025

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**APP/Z4310/X/25/3358701**

**No. 28 Brookdale Road, Liverpool L15 3JE**

- 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 Mohammed Raja Lettings Ltd.
- The application, dated 1 October 2024, was validated on 1 October 2024 - reference 24LE/2536. It was refused by a notice dated 22 November 2024.
- The Application for a Certificate of Existing Lawful Development, (LDC), for a House in Multiple Occupation (HMO) for 3 - 6 persons (Use Class C4) was made under section 191(1)(a) of the Act in respect of the property at No. 28 Brookdale Road, Liverpool L15 3JE.

**Summary of decision: The appeal is dismissed.**

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### Appeal property and application

1. The appeal property, No. 28 Brookdale Road, is a 2 storey mid-terrace house on the south-eastern side of the residential road. Application plans show a lounge, a kitchen/dining room and a bedroom on the ground floor; 3 bedrooms and a bathroom on the first floor with 2 bedrooms and a shower room in the roof loft.
2. The application by Mr Mohammed Raja for Mohammed Raja Lettings Ltd for a certificate of lawfulness said that on 3 September 2002, use of No. 28 Brookdale Road as a House in Multiple Occupation for 3 - 6 persons, (Use Class C4 - The Town and Country Planning (Use Classes) Order 1987), began. Mr Raja said it continued to the date of the application, 1 October 2024. No. 28 was a 6 bedroom property. It had never accommodated more than 6 tenants at any time. The use of No. 28 as a C4 HMO was lawful.

### 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 area 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.

## Considerations

6. The Applicant, Mr Mohammed Raja, said No. 28 Brookdale Road had been consistently operated as a 3 - 6 persons (Use Class C4) HMO prior to his purchase of the property. The previous owner from 2006 to 2022 had provided a signed affidavit of confirmation.
7. Mr Raja's application sought to establish the use of No. 28 Brookdale Road as a small house in multiple occupation, (HMO), within Class C4 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, was lawful at the date of the application.
8. The evidence is, that on the balance of probabilities, the dwelling at No. 28 Brookdale Road had been used as a C4 HMO at times after 1 October 2010 but before the Liverpool City Council Article 4 Direction came into force on 19 July 2018. It would show that in the period between 1 October 2010 and 19 July 2018 occupation of No. 28 as a 3 – 6 person C4 HMO was a lawful use of the property. If that use was ongoing, the lawful use would have persisted after 19 July 2018 as such existing lawful uses were not caught by the Article 4 Direction.
9. It appears that, at the date of the LDC application, 1 October 2024, the Council accepted that No. 28 was in use as a C4 HMO. However, they said such use of No. 28 Brookdale Road had not been continuous in the period to 1 October 2024. That was because a Freedom of Information, (FOI), request confirmed the number of student occupiers at No. 28 had been increased to 7 for the periods 1 July 2022 to 24 August 2022 and from 5 August 2022 to 14 September 2023, confirming that for 15 months No. 28 was occupied by 7 students. HMOs for 7 or more persons sharing a dwelling would have been a sui generis use, a use of its own kind.
10. The Council said appeal decision ref: APP/Z4310/X/23/3325954 – 66 Rooms, Kensington, Liverpool L7 8XB was relatable. In that instance, there had been no dispute that until 30 June 2020, the appeal property was occupied as an HMO by 6 individuals. Immediately after the Article 4 Direction came into effect on 17 June 2021 and up until the date the LDC application was made, the appeal property was occupied as an HMO by 8 persons. If that level of occupation amounted to an intervening unlawful large HMO use, that is by effecting a material change of use, the C4 lawful use would have been lost prior to a resumption of the C4 use.
11. I agree with the Inspector's approach in the *66 Rooms* decision where a change of use can only be material by bringing about a definable change in the character of the main use of the land. There needs to be some significant difference in the character of the activities from what has gone on previously, not just a change from one use class to another. Nor is it essential for the preservation of a lawful use for it to be unceasing or uninterrupted for lawfulness to be retained. However, a lawful use could use can be lost by abandonment, or its replacement by another lawful use, or by an unlawful use if that unlawful use was materially different to the original lawful use. While service of an enforcement notice in those circumstances allows for 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.

12. Having accepted that the lawful use of No. 28 Brookdale Road was as a C4 3 – 6 persons HMO at least up to its occupation by 7 persons, was that additional person's occupation over a significant period and did it change the character of the use such that it amounted to a material change of use of the property?
13. Freedom of Information Request – 21861793 made to the Council by Mr Mohammed Raja showed, amongst others, that No. 28 was occupied by 7 persons for 15 months. As the Council said, such occupation was comprised of 2 clearly significant periods. Although Mr Raja said there was no time at which more than 6 persons had occupied No. 28, in the absence of more than that refutation, I need to consider the materiality of the effect of occupation by 7 persons on the use of No. 28.
14. The Appellant needed here to show that a 7 person HMO use of No. 28 was not materially different to the C4 3 – 6 person HMO. That is because each of those uses carried out within the same planning unit might be of such a similar characteristic that changes between those uses might not amount to a material change of use, simply because it is a change from a C4 use to a large HMO. This was not directly addressed by the Appellant as his assertion was that there was no time when No. 28 was occupied by more than 6 individuals.
15. In my view, the occupation of the small former dwelling at No. 28 Brookdale Road by 7 individuals, albeit just one more than person than the six I consider could be lawfully living in the property, materially changed its character. This is a small house somehow arranged on 3 floors such that 6 bedrooms, with one smaller than 3m x 3m floor area, had been set up. I note that the FOI date showed that No. 28 had been occupied by fewer than 6 persons. If even somewhat overcrowded by 6 persons, I consider it would have been over intensively used when occupied by 7 persons, the number of bedrooms failing to match that number of occupants. The overall effect on the property and its immediate surroundings would, in my view, have been such that the character of the use would have been significantly different to that preceding.
16. Whilst the Appellant denied occupancy by 7 persons, the balance of evidence before me is, in my view, that a material change in the character of the use of No. 28 occurred for a significant period, such that the lawful 3 – 6 person HMO use was supplanted by an unlawful 7 person large HMO use.

## Conclusion

17. 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. 28 Brookdale Road, Liverpool L15 3JE was well founded and that the appeal should not succeed. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*John Whalley*

INSPECTOR