



Appeal Decision

Site visit made on 28 October 2025

by **M Ollerenshaw BSc(Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26th November 2025

Appeal Ref: APP/Z2315/X/25/3362476

14 Bulcock Street, Burnley, Lancashire, BB10 1UB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mr Mathew Levy, Levy Family Partnership against the decision of Burnley Borough Council.
 - The application ref CEA/2024/0401, dated 2 August 2024, was refused by notice dated 30 September 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is described on the application form as "...trading house of multi-occupation".
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Mathew Levy, Levy Family Partnership against Burnley Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. S191 of the Town and Country Planning Act 1990 (the Act) provides for the certification of any lawful existing use or operations. S191(2) of the Act sets out that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. The appellant did not tick the box on the application form to indicate that they wished to ascertain the lawfulness of existing building works. However, in addition to an existing use, they also sought to establish that an extension constructed to facilitate the use fell within the scope of permitted development. The appeal form describes the use and development for which a Lawful Development Certificate (LDC) is sought as "small house in multiple occupation and extensions to facilitate this". That represents a more accurate description than the one given on the application form as it refers to the building operations. I have therefore determined the appeal on the basis of that description. I am satisfied that there would be no injustice caused to either party from this approach.

5. Neither of the main parties indicated that it was essential for me to enter the site. I can determine the appeal without an internal inspection of the building.
6. I have dealt with two other appeals at nearby sites, 12 Bulcock Street and 14 Wynotham Street¹. These appeals are made by the same appellant and seek to establish the lawfulness of a House in Multiple Occupation (HMO) (use class C4), but are the subject of separate decisions.
7. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. The decision is based strictly on the submitted evidence and planning law, and the planning merits of the development are not relevant.

Main Issue

8. The main issue is whether the Council's refusal to grant a certificate was well-founded. This turns on whether the development would have been lawful at the date of the application.

Reasons

9. The appeal building is a two storey terraced house situated on a street of similar properties. The submitted plans show four bedrooms with en-suites and a communal kitchen. There are two bedrooms at ground floor level and two on the first floor. A single storey extension has been erected to the rear of the property to facilitate use as an HMO.
10. There is no dispute between the parties that the appeal property would originally have been constructed and occupied as a dwellinghouse within use class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). I have no reason to find otherwise based on the evidence before me.
11. Use class C4 of the UCO provides for the use of a dwellinghouse as an HMO by not more than six residents; that is up to six unrelated individuals who share basic amenities. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) grants planning permission under class L for a change from use class C3 (use as a dwellinghouse for up to six people living as a single household) to class C4.
12. The Council says that the property appears to provide accommodation for more than six individuals, which exceeds the level of occupancy permitted under class C4, and that a small HMO cannot therefore be lawful. However, this is not what was applied for. An HMO with more than six residents would be a sui generis use which would require planning permission. The appellant applied for a LDC for use as a small HMO within use class C4. I have determined the appeal on that basis.
13. An Article 4 Direction came into force in parts of Burnley, including the area in which the appeal property is located, on 14 October 2024. This removes the

¹ Appeal Ref: APP/Z2315/X/25/3362481 and APP/Z2315/X/25/3362483

permitted development right for change of use from use class C3 to C4. The Article 4 Direction is not a retrospective constraint, however. Provided that the property was used as a small HMO prior to that date, planning permission would not have been required for the change of use.

14. The appellant's grounds of appeal are that the conversion works and signed tenancy agreements demonstrate that the change of use to an HMO occurred prior to the Article 4 Direction coming into force. However, under s191 of the Act the relevant date for determining whether the use is lawful is the date the application was made, that being 2 August 2024. The issue is therefore whether the use of the property as a small HMO was lawful on the date of the application.
15. Relevant case law has established that buildings do not necessarily need to be occupied for there to have been a material change of use². The evidence should be considered in the round with regard to the former use of the building, the physical state of the building at the date of the application, the actual use at that date, and the intended use. Although actual use is therefore not the sole consideration, it remains an important factor in determining whether the change of use occurred.
16. The application form states that the existing use as a trading HMO within use class C4 began on 3 March 2024 and that it continued without interruption. However, there is no substantive evidence before me to show how this commencement date has been derived, and other appeal documents indicate markedly different dates for the commencement of the use. The submitted licence to occupy agreement between the appellant and East Lancashire Hospitals NHS Trust commenced on 24 November 2023 and terminated on 24 May 2024. The appellant's statement of case states that the tenancy agreements commenced on 1 November 2024, which is some three months after the date of the application.
17. The licence to occupy agreement does not provide details of the tenants, including dates of occupation and the identities and number of tenants. Therefore, the agreement does not demonstrate that the property was used by up to 6 unrelated individuals within use class C4. In any case it can only show that an agreement was in place, not that the property was used as a small HMO.
18. The letter of support from the letting agent dated 29 July 2024 refers to the proposed conversion of several properties to HMOs. The letter makes reference to a recent project on Bulcock Street which is said to have been occupied by NHS staff just days after its completion. It does not confirm that the property was being used as a class C4 HMO. Nor does it specifically identify the appeal property, which is relevant because there appear to be a number of HMOs on Bulcock Street with which the appellant is involved.
19. No other documentary evidence of occupation has been provided, such as utility bills or rent payments, to substantiate the appellant's claimed use. Whilst there may have been an intention to use the property as a small HMO, the evidence is not sufficiently clear to demonstrate that the property was in such use, at the date of the application.
20. The evidence is limited in relation to the physical state of the building at the date of the application. There is insufficient detail to show that the conversion works had

² *Impey v SSE & Lake District SPB* [1981] JPL 363; [1984] P&CR 157 and *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15.

been substantially completed or reached an advanced stage whereby the property had the arrangement and day to day facilities necessary to enable it to be used as an HMO, at the date of the application. Therefore, the physical alterations to the property do not demonstrate that the change of use had occurred.

21. On the balance of probabilities, and considered in the round, the appellant's evidence is not sufficiently precise and unambiguous to demonstrate that the use as a small HMO was lawful at the date of the application.
22. There is no dispute that the associated building operations existed at the date of the application. However, the Council considers that the single storey rear extension does not constitute permitted development, and that consequently the use of the property as an HMO cannot be lawful since it relies on an extension which requires but does not benefit from planning permission.
23. Class A of Part 1 of Schedule 2 of the GPDO describes the enlargement, improvement or alteration of a dwellinghouse as permitted development, subject to the limitations in paragraph A.1. The Council considers that the extension does not comply with paragraph A.1(b) which does not permit development if, as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).
24. The curtilage is confined to the yard area at the rear, a large proportion of which is occupied by the single storey extension. The appellant states that the original curtilage was 16 square metres and that 8 square metres remains following the extension. However, there are no detailed calculations before me. It appears from the submitted plans that the remaining area of curtilage is less than 8 square metres. The evidence is not sufficiently clear to satisfy me that the area covered by the extension does not exceed 50% of the curtilage.
25. Development is not permitted under class A paragraph A.1(k)(iv) if it would consist of or include an alteration to any part of the roof of the dwellinghouse. The flat roof of the single storey extension is attached to the existing rear outrigger but does not appear to alter its roof. It does not therefore infringe the limitation at A.1(k)(iv).
26. The condition at A.3(a) of class A requires the materials used in any exterior work to be of a similar appearance to those used in the construction of the exterior of the existing dwelling. This does not mean that the materials must be the same or match exactly. The extension is constructed with a red brick plinth with render above and a flat grey roof. The dwelling is faced in stone with a blue slate roof, and the rear outrigger is rendered. The rendered walls of the new extension are of similar appearance to the outrigger to which it is attached, and the grey roof is a similar colour to the existing slate roof. However, the red brick base is very different to the stone and render walls of the existing building. Although it is a relatively small part of the extension, it is clearly visible from the back street and is not de minimis in my view. It fails to provide a similar appearance to the exterior of the existing building and does not comply with A.3(a) of class A.
27. Therefore, the extension to the property does not comply with paragraph A.1(b) and condition A.3(a) of class A of Part 1 of the GPDO, and is not permitted development. As express planning permission has not been obtained for the extension, I find that it was not lawful at the date of the application.

Conclusion

28. For the reasons given above and taking account of all the evidence presented to me, I conclude that the Council's refusal to grant a certificate of lawful development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Offerenshaw

INSPECTOR