
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/25/3362483

14 Wyntham Street, Burnley, Lancashire, BB10 1UQ

- 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/2024/0400, dated 2 August 2024, was refused by notice dated 30 September 2024.
 - The application was made under section 192(1)(a) and (b) 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 “change of use from C3 terrace dwelling to C4 house of multi-occupation HMO”.
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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. The appeal form describes the use and development for which a Lawful Development Certificate (LDC) is sought as “small HMO with extensions to facilitate”. That represents a more accurate description than the one given on the application form as it also refers to the building operations that form part of the development. I have therefore determined the appeal on the basis of that description. This will not cause injustice to either party.
4. The application was made under s192 of the Town and Country Planning Act 1990 (the Act) for a LDC which provides for the certification of any lawful proposed use or operations. The Council determined the application on that basis. However, the appeal form indicates that the application was made under s191 of the Act, which relates to the lawfulness of existing uses or operations. An Inspector can determine an appeal under s191 even if the application was made under s192, where it is clear that the appellant is in reality seeking to ascertain that an existing use or development is lawful.
5. The appellant confirms that they seek to establish that an existing use as a small HMO commenced prior to the introduction of an Article 4 direction, and that the extensions constructed to facilitate that use fell within the scope of permitted development rights. The Council maintains its view that the application was

correctly considered as a proposed use and development under s192, but raises no specific objection to my considering the appeal under s191. I have determined the appeal in respect of an LDC seeking confirmation that an existing use as a small HMO and extensions were lawful, under s191 of the Act. I am satisfied that there would be no injustice caused to either party from this approach.

6. 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.
7. I have dealt with two other appeals at nearby sites, 12 and 14 Bulcock 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.
8. S191(1) of the Act states that if a person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application to the local planning authority. S191(2) 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.
9. 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

10. 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

11. The appeal building is a two storey terraced house situated on a street of similar properties. The submitted plans show five bedrooms with en-suites and a communal kitchen. There are two bedrooms at ground floor level, two on the first floor and one within the roof space. A single storey extension has been erected to the rear of the property to facilitate use as an HMO.
12. 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.

¹ Appeal Ref. APP/Z2315/X/25/3362476 and APP/Z2315/X/25/3362481

13. 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.
14. 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.
15. 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 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.
16. 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.
17. 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.
18. The application form states that the existing use was as a class C3 dwelling, but that this use ceased in May 2024. This is when the appellant purchased the property with the intention of converting it into small HMO accommodation and conversion works to establish that use commenced. The appellant's planning statement and the letter of support from the letting agent dated 29 July 2024 refer to the conversion of the property to an HMO as a proposal, rather than an existing use at that time.
19. The appellant states that the tenancy agreements for the HMO commenced on 1 November 2024. However, copies of the agreements have not been provided, and it is unclear how many residents there were and whether the property was being used as a small HMO within use class C4. These are only an indication that agreements were in place, not that the property was used as a small HMO. Even I did accept that they show the property was first occupied as an HMO from early November 2024, which for the reasons given I do not, this is some three months after the application submission date. No other documentary evidence of

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

occupation has been provided, such as utility bills or rent payments, to substantiate the appellant's claimed use. Therefore, the evidence is not sufficiently clear to demonstrate that the property was occupied as a small HMO, 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. It is put to me that the conversion works were completed by the end of September 2024. But there is insufficient detail to show that they had 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. Development is not permitted under 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 kitchen 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).
24. 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.
25. Whilst the rear dormer does not form part of the Council's reasons for refusal, it is necessary to establish whether it complies with the limitations and conditions under Class B of Part 1 of the GPDO which relates to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Condition B.2(a) requires the materials used in any exterior work to be of similar appearance to the exterior of the existing dwelling. The grey UPVC horizontal cladding to the face and cheeks of the dormer has a similar appearance to the grey slate roof of the property when viewed from street level. However, the grey UPVC window frames installed are not similar to the white window frames in the rest of the property. The appellant contends that

it would be possible to replace all the windows in the property to match the grey frames of the dormer window. However, I have assessed whether the development was lawful on the date of the application.

26. Therefore, the extensions to the property do not comply with condition A.3(a) of class A and B.2(a) of class B of Part 1 of the GPDO, and are not permitted development. As express planning permission has not been obtained for the extensions, I find that they were not lawful at the date of the application.

Conclusion

27. 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