



Appeal Decision

No site visit made

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2025

Appeal Ref: APP/U4230/X/25/3361047

73 Ellesmere Street, Swinton M27 0JT

- 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 (LDC).
 - The appeal is made by Mr Daniel Fung against the decision of Salford City Council.
 - The application ref PA/2024/1758, dated 22 November 2024, was refused by notice dated 29 January 2025.
 - The application was made under section 192(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 as “the proposed conversion from C3 dwelling to C4 HMO”.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The LDC application form refers to an “*Application for a Lawful Development Certificate for a Proposed Use or Development*” and hence was made under section 192 of the 1990 Act. However, it is clear from the appeal submissions that what the appellant is actually seeking is to ascertain whether an existing use is lawful. That is how the Council determined the application, with the proposal described on the decision notice as “*Existing use of property as 5-bedroom 5 person House in Multiple Occupation (HMO) (Use Class C4)*”. The appeal form also stipulates that the application was made under section 191. I am therefore determining this appeal with regards to section 191 of the 1990 Act.
3. It was determined that it was not necessary for me to conduct a site visit. The main parties were made aware of this fact, and no objections were raised to the appeal being determined on this basis.

Main Issue

4. The main issue is whether the Council’s decision to refuse to grant a LDC is well-founded.

Reasons

5. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use subject of the application is lawful for the purposes of section 191 of the 1990 Act. A use is lawful under the provisions of section 191(2)(a) of the Act if no enforcement action can be taken because it did not involve development requiring planning permission, or because the time for taking enforcement action against the use has expired. 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 the evidence alone is sufficiently precise and unambiguous.

6. A Direction under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 applies to the area where the appeal property is located. The Direction removes permitted development rights for a change of use of a building from a C3 dwellinghouse to a C4 small house in multiple occupation (HMO) and came into force on 17 November 2024.
7. There is no dispute that the previous use of the property was a C3 dwelling. The matter therefore turns on whether the use of the appeal property materially changed to a C4 HMO before the 17 November 2024. The evidence provided by the appellant amounts to existing and proposed floor plans, a letter dated 15 November 2024 from the Council's Building Control team confirming receipt of a Building Control Approval Application for a "*HMO conversion*", and two photographs dated 14 November 2024 showing the partial demolition of an internal wall at the property.
8. The appellant argues that the submitted evidence proves that works to enable the change of use from a C3 dwelling to a C4 HMO had commenced prior to the 17 November 2024. The key question is whether the building was capable of being used as a small HMO as matter of fact and degree.
9. Caselaw¹ has established that too much emphasis has been placed on the need for there to have been "actual use". Instead, the matter needs to be looked at in the round and to establish what use the building has or of what use it is. It is not as straightforward to simply regard commencement as automatically giving rise to a change of use, or equally, to find that there has not been a change of use purely because the building was not occupied. Physical works may be relevant to the question of whether there has been a change of use but are not necessarily determinative. It is a matter of fact and degree as to when the change of use occurs.
10. Whilst they assist in showing the appellant's intention to convert the property to a C4 HMO, the submitted floor plans and letter from the Council's Building Control team do not assist the appellant in demonstrating that the material change of use took place before the 17 November 2024.
11. The two photographs dated 14 November 2024 show internal works being carried out at the property. However, given that both photographs only show the partial demolition of an internal wall, with the resulting debris still on the ground, the works are clearly very early on in the conversion process. It is also apparent from the physical state of the building in the photographs that significant works were still necessary before the property could be occupied as a C4 HMO.
12. Given the limited extent of the works carried out by the date the photographs were taken, and the extent of the works remaining, it is reasonable to conclude that it is highly unlikely that the conversion works would have been substantially completed by 17 November 2024. In summary, the evidence does not show that the material change of use took place before Article 4(1) Direction came into force.

¹ Welwyn Hatfield v SSCLG & Beesley [2011] UKSC 15

13. I therefore find that the appellant has failed to demonstrate, on the balance of probabilities, that the material change of use of the property from a C3 dwelling to a C4 HMO had occurred before the Article 4(1) Direction came into force. Consequently, as planning permission has not been granted for the use of the appeal property as a C4 HMO, the use would not have been lawful on the date of the application.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development is well-founded and that the appeal fails. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

David Jones

INSPECTOR