



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2026

Appeal Ref: APP/U5930/X/23/3330289

30 Brierley Road, Leytonstone, London E11 4JE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (“the Act”) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Ashley Nissim against Waltham Forest London Borough Council.
 - The application ref 231833 is dated 20 July 2023.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which an LDC is sought is use of property as a house in multiple occupation up to 4 persons (HMO) (Class 4).
-

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Preliminary Matters

2. The parties had been advised that a site visit would not be undertaken before the appeal was transferred to me. I have reviewed this and agree that a site visit would not assist in my deliberation of the facts pertinent to the main issue in the appeal.
3. The appellant’s evidence includes statements that he and 3 tenants made. While these are described as statutory declarations, they do not include the words required by section 20 of the Statutory Declarations Act 1835 and set out in the Schedule to that Act.¹ This means that, even though the statements were witnessed and signed in the presence of a solicitor, they cannot be given as much weight as statutory declarations with the required wording would.
4. It is plain that ‘Class 4’ in the description of the use means ‘Use Class C4’ and I shall determine the appeal using that more precise wording.

Main Issue

5. The Council has confirmed that if it had determined the application, it would have refused to issue an LDC. The main issue is whether that decision would have been well founded.
6. The responsibility for providing sufficient information to support an LDC appeal primarily rests with an appellant. However, if no other evidence contradicts or otherwise makes his version of events less than probable, and provided his evidence is sufficiently precise and unambiguous there is no good reason to withhold an LDC.

¹ I A.B. do solemnly and sincerely declare, that and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the year of the reign of his present Majesty, intituled the Statutory Declarations Act 1835.

Reasons

7. Section 191(2) of the Act provides that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. There is no evidence that the change of use to use as a small HMO contravenes any requirement of an enforcement notice, so only (a) needs to be considered further. The onus to show that enforcement action could not be taken lies with the appellant, to be demonstrated on the balance of probabilities.

What needs to be demonstrated

8. Enforcement action may be taken if any development defined in section 55 of the Act is carried out without planning permission. The definition includes “the making of any material change in the use of any buildings or other land.”
9. Prior to 1 October 2010, a change of use from use as a dwellinghouse within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (“the 1987 Order”) to use as an HMO by any number of residents was development requiring an express grant of planning permission. Since that date, the change of use of a dwellinghouse to use within Class C4 of the 1987 Order (a small HMO) has been permitted by other Orders, currently Article 3 and Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“Class L” of “the 2015 Order”).
10. However, a Direction that alters the effect of the 2015 Order within Waltham Forest came into force on 16 September 2014. As a result, any change of use of the appeal site from use as a dwellinghouse to use as a small HMO made on or after that date requires an express grant of planning permission, as it did before 1 October 2010. The Direction does not affect the permission Class L also grants for the change of use from use as a small HMO to use as a dwellinghouse.
11. Because Class L has only been in force since 1 October 2010, it could not permit the making of a change of use to use as a small HMO before that date. The appellant contends that he began renting 4 rooms to unrelated individuals, in other words changed the use of the premises to use as an HMO, in 2001 so by his admission that change of use cannot be lawful by reason of Class L.
12. The remaining route to acquiring immunity from enforcement action is via section 171B(3) of the Act. This requires that the change of use was made on or before 20 July 2013, 10 years before the date of the application, and that the small HMO use continued thereafter for not less than 10 years without significant interruption.

Whether the change of use was made on or before 20 July 2013

Room 1F

13. While the appellant claims that HMO use began in 2001, the earliest evidence produced is a tenancy agreement (TA) for this room dated 24 August 2006. The TA confirms the right of the tenant (tenant BB) to share the use of the kitchen, bathroom/WC, lounge and garden with other residents, indicative of use of the property as an HMO at that time. There is no other evidence relating to the use of the room until after 20 July 2013.

Room 1M

14. The earliest evidence of the use of this room is a TA dated 8 April 2009, which confirms the right of the tenant (tenant CF) to share the use of the kitchen, bathroom/WC, lounge and garden with other residents, indicative of use as an HMO then. The appellant's timeline document does not reference this TA, but it stands in its own right, corroborated by tenant CF's declaration, which states that he moved in 6 days later, on 14 April 2009. There is no other contemporary evidence relating to the room on or before 20 July 2013.

Room 1R

15. Indirect evidence that a tenancy had existed on or before 20 July 2013 is found in an email from the appellant to a tenant dated 7 August 2013, which refers to a contract signed on 15 May 2010. However, a copy of that contract has not been produced, nor has any other direct evidence of the use of the room on or before 20 July 2013.

Room GF

16. The appellant states that tenancies have existed for this room since 21 May 2012 but no TA or other evidence specific to that room from before 20 July 2013 has been provided.

Other considerations

17. The only other evidence pre-dating 20 July 2013 is an email from the appellant to a contractor, most likely a plumber, about work to be carried out at the property in October 2012. The email names 3 tenants and provides their contact details but does not describe how they were using the premises at that time. However, their names appear to correspond to the people named by the appellant as occupiers of Rooms GF, 1R and 1F (tenant BB) at that time and on 20 July 2013.
18. While absences of TAs and other contemporary documentary evidence are noted, the full range of the presented evidence, not least the signed declarations, must be considered. Overall, it includes precise and unambiguous evidence that Room 1F was let on terms consistent with use as an HMO on or before 20 July 2013. While there is less evidence for other rooms, it is sufficient to demonstrate, on the balance of probabilities, that Room 1M was also let on terms consistent with use as an HMO on or before 20 July 2013 and indicates the same for Room 1R. Viewed collectively, this is sufficient to demonstrate, on the balance of probabilities, that the change of use of the premises to use as a small HMO was instituted on or before 20 July 2013, despite the shortcoming in the wording of relevant declarations.

Whether the use continued thereafter without significant interruption

Room 1F

19. Tenant BB named in the 24 August 2006 TA signed a similar TA for the same room, with the same shared use rights, on 1 May 2015. While his signed declaration gave that room as his address, it states that he lived in Room 1R continuously. Having regard to all evidence, I am satisfied that the reference to Room 1R was an error.

20. Turning to the content of the declaration, tenant BB states that the property had continually been rented out as 3 or more rooms to unrelated people on separate contracts since he moved in on 1 September 2006. He provides the names of the tenants for Rooms 1M (tenant CF), 1R and GF from 2014 onward and their approximate periods of occupation, tallying with the rent accounts or other evidence provided by the appellant.
21. Viewed as a whole, tenant BB's declaration and the TAs he signed demonstrate continuous use of Room 1F on terms consistent with use as an HMO from 1 September 2006 to the date of the application, a period of over 16 years.

Room 1M

22. Tenant CF named in the 8 April 2009 TA signed similar TAs for the same room, with the same shared use rights on 13 September 2013, 4 April 2015 and 14 November 2021. He declared that the property had been continuously rented out as 3 or more rooms to unrelated people on separate contracts since 14 April 2009. He provides the names of the tenants for Rooms 1F (tenant BB), 1R and GF from 2014 onward and their approximate periods of occupation, tallying with the rent account and other evidence provided by the appellant.
23. Viewed as a whole, tenant CF's declaration and the TAs he signed demonstrate continuous use of Room 1M on terms consistent with use as an HMO from 14 April 2009 to the date of the application, a period of over 14 years.

Room 1R

24. The appellant identifies 3 different occupiers of this room between 14 September 2013 and the application date. The first of these, named in a TA signed on 13 September 2013, is the recipient of the email mentioned in paragraph 14 above, which suggested he had occupied the room since May 2010. That tenant left in March 2020, after which the room was unoccupied for some 6 months. Noting that this break in occupancy affected only one room and coincided with the Covid-19 pandemic, it is not a significant interruption to the claimed small HMO use.
25. There is some evidence of a tenancy between September 2020 and January 2021, after which the room was advertised along with Room GF. A new TA was signed on 29 March 2021 and the appellant states that the tenant named in it was still in occupation at the time of the application.

Room GF

26. The appellant identifies 4 different occupiers of this room between 21 May 2012 and the application date. The room was vacated in November 2020 and the appellant states that it was advertised that month and again, with Room 1R, in March 2021, with a new TA signed that month. As this was also during the Covid-19 pandemic, and as the use of the whole property must be considered, the length of the vacancy is not a significant interruption to the claimed small HMO use.
27. A signed declaration made by the most recent occupier of Room GF states that the property had continually been rented out as 3 or more rooms to unrelated people since she moved there on 7 April 2021.

Other considerations

28. Some dates given in the declarations do not tally with other evidence. For example, tenant CF declares he has lived in Room 1M since April 2009, but the declarations made by the appellant and tenant BB only state that he lived there since 2014 or “since prior to 2014.” This appears to be because it was believed that continuity of use would need to be demonstrated with reference to when the Direction came into force, not over any 10-year period beginning on or before 20 July 2013.
29. The Council questions whether the tenancies included use of shared facilities, but the TAs provided do confirm shared use of the kitchen, bathroom/WC, lounge and garden. Although the declarations do not state this detail, it does not make the evidence of the TAs insufficient.
30. The Council also questions whether identified repair and refurbishment work resulted in any break in occupancy. There is no evidence that the works required any tenant to move out or were so lengthy that, had any break occurred, it would have amounted to a significant interruption to the use. While bank statements recording payment of rent do not identify the appeal premises, the appellant is correct that the names and dates can be cross-referenced to TAs and other evidence specific to it.
31. I also recognise that the presented utility bills and meter readings do not confirm that the property was in use as an HMO. However, I would not expect any utility bill to do much more than specify the address of the property, what was consumed over the relevant period, and the name and address of the person being billed.
32. While I note the Council’s criticism of some evidence on the basis that it does not demonstrate continuous use of the property as an HMO by 3 to 6 unrelated persons, the LDC is sought for use as an HMO by up to 4 persons. In particular, the definition of a small HMO within Class C4 of the 1987 Order and the definition of an HMO in the Housing Act 2004 do not specify a minimum of 3 residents.
33. The evidence of the TAs for Rooms 1F and 1M and the declarations made by tenants BB and CF who signed them, along with the supporting documentary evidence provided by the appellant, is precise and unambiguous. I find it is sufficient to demonstrate that those 2 rooms were concurrently occupied on terms indicating use as an HMO for over 14 years.
34. While the evidence for the use of the other 2 rooms is less compelling, it is instructive to consider the terms of the TAs that have been substantiated by tenants BB and CF in the context of the layout of the property and how it could be used by any other residents.
35. Rooms 1F and 1M were concurrently occupied on tenancies that granted tenants BB and CF shared use of the kitchen, bathroom/WC, lounge and garden for over 14 years. As the property only has 1 kitchen and 1 bathroom/WC, any residents of Rooms 1R and GF during those 14 years must have shared those facilities on a communal basis with tenants BB and CF, consistent with HMO use. Seen in this way, the evidence demonstrates that the use of the premises as an HMO continued for over 10 years while tenants BB and CF occupied Rooms 1F and 1M, despite any shortcoming in the wording of their declarations. There is no evidence that the HMO use was ever carried out by more than 4 people.

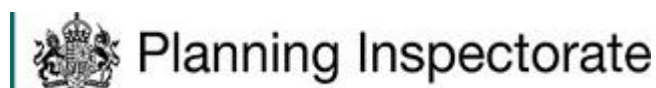
36. Furthermore, there is no evidence that any change of use from use as a small HMO to use as a dwellinghouse defined by Class C3 of the 1987 Order occurred after 1 October 2010, when the predecessor to Class L of the 2015 Order came into force.

Conclusion

37. For the reasons given above I conclude, on the evidence now available that, had the Council refused to grant an LDC in respect of use of property as a house in multiple occupation up to 4 persons (HMO) (Use Class C4) that refusal would not have been well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

Mark Harbottle

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 (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 20 July 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use of the property to use as a house in multiple occupation by not more than 4 people was made before 20 July 2013 and the use continued thereafter without significant interruption until the date of the application.

Signed

Mark Harbottle

INSPECTOR

Date: 28 January 2026

Reference: APP/U5930/X/23/3330289

First Schedule

Use of property as a house in multiple occupation [by] up to 4 persons (HMO) (Use Class C4)

Second Schedule

Land at 30 Brierley Road, Leytonstone, London E11 4JE

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in this decision dated: 28 January 2026

by Mark Harbottle

Land at: 30 Brierley Road, Leytonstone, London E11 4JE

Reference: APP/U5930/X/23/3330289

Scale: Not to Scale

