



Appeal Decision

Site visit made on 10 February 2026

by Jean Russell MA FRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2026

Appeal Ref: APP/U4230/X/25/3373684

30 Kipling Street, Salford, M7 2FF

- The appeal is made by Mr Tuvia Fagen o/b The Letsmove Group under section 195 of the Town and Country Planning Act 1990 (as amended) against the decision of Salford City Council to refuse to grant a certificate of lawful use or development (LDC).
 - The LDC application (ref: PA/2025/0709) was dated 9 July 2025 and refused by notice dated 19 September 2025.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990. The existing use for which a certificate of lawful use or development is sought was described on the application form as: "C4 – Houses in Multiple Occupation. The property is being used as a HMO".
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DECISION

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

PRELIMINARY MATTERS

2. This appeal is made to ascertain that the existing use of a terraced house at 30 Kipling Street is lawful for planning purposes. However, the Council has pointed out that the appellant did not accurately describe the existing use. Schedule 14 to the Housing Act 2004 (HA04) precludes any building from being a 'house in multiple occupation' (HMO) if it is managed or controlled by a registered social landlord (RSL), as is the case here.
3. Under s191(4) of the Town and Country Planning Act 1990 (TCPA90), an Inspector may modify the description of an existing use for which a lawful development certificate (LDC) is sought. If any existing use is shown to probably be lawful, an LDC should not be refused simply on the basis of an error on the application form.
4. Having corresponded with the parties and visited the site, I find that the existing use of the 30 Kipling Street would be accurately described as: "Use as 4-bedroom residential accommodation that is managed by a registered social landlord and occupied by up to 4 unrelated persons, sharing kitchen, bathroom and living facilities, as their sole or main place of residence." I shall sometimes refer to the appeal or the existing residential use for short.

MAIN ISSUE

5. The main issue is whether the existing use of 30 Kipling Street as 4-bedroom residential accommodation that is managed by a registered social landlord and occupied by up to 4 unrelated persons, sharing kitchen, bathroom and living facilities, as their sole or main place of residence was lawful on the date of the LDC application, namely 9 July 2025.

6. Under s191(2) of the TCPA90, uses are lawful at any time if no enforcement action may be taken in respect of them, perhaps because they did not involve development or require planning permission¹. The appellant's case is that planning permission is not required to carry out the existing use.
7. In any LDC appeal, the onus is on the appellant to make their case on the balance of probabilities. Their evidence should be accepted if it is sufficiently precise and unambiguous, and there is nothing to contradict their version of events or make it less than probable.

REASONS

Background

8. Under s57(1) of the TCPA90, planning permission is required for 'development' and that term is defined under s55(1) as including the making of any material change in the use of any building or land. A material change of use is taken to have occurred if and where there is some significant difference in the character of the activities taking place on the land as a matter of fact and degree.
9. No. 30 was probably built for use and originally used as a single dwellinghouse by a person or persons to be regarded as forming a single household, that is, people who are members of the same family or who live together as though they are. This original use would have fallen within use class C3 set out in Schedule 1 to the Town and Country Planning (Use Classes Order) 1987 (UCO).

Change of Use to a C4 HMO

10. The appellant claims, and the Council accepts that the use of the building was probably changed from use as a single dwellinghouse falling within use class C3 to use as a small HMO falling under use class C4, being use of a dwellinghouse by not more than six residents as an HMO as defined under s254 of the HA04.
11. The appellant stated on the LDC application form that the C4 HMO use began in October 2018. However, they also provided the Council with a copy of a tenancy agreement referring to HMO use which was dated 1 November 2014, while the Council's HMO Licensing Team has records of a selective licence being issued in respect of a small HMO at no. 30 on 10 October 2016.
12. Inconsistency in evidence as to the date of a change of use is often problematic in LDC appeals but makes no difference in this case. The Council's records are likely to be the most reliable, but whether the change of use took place in October 2016 or October 2018, it probably took place with the benefit of planning permission.
13. I say that firstly because the new use was probably as a small HMO falling within use class C4. There were probably only four residents, because there are only four bedrooms in the building and the Council issued a selective licence, whereas an HMO licence would have been required if there were five or more occupiers.
14. Secondly, in both October 2016 and October 2018, planning permission was granted under Article 3(1) and Part 3, Class L of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)

¹ It is also necessary that the uses do not constitute a contravention of any of the requirements of any enforcement notice in force, but that is not relevant here.

for the change of use of a building from a use falling within use class C3 to a one falling within C4 or vice versa².

15. On 25 November 2018, an 'Article 4 Direction' (A4D) made by the Council took effect so as to remove Class L 'permitted development' rights in areas of Salford which include Kipling Street. Since then, it has been necessary for developers in the relevant areas to apply to the Council for express planning permission if they wish to make a material change of use of a single dwelling to use as a C4 HMO.
16. However, the A4D does not apply retrospectively. The change of use of the appeal building to use as a C4 HMO was probably carried out with the benefit of planning permission granted by the GPDO before A4D came into force.

Continued Lawfulness of the C4 HMO Use

17. The Council has questioned whether the permitted C4 use was still taking place on and after the date of the A4D. Their records show that no tenants were registered for Council Tax purposes from May 2017, when the property was in the name of the then landlord or their agent. The selective licence granted in October 2016 expired in January 2021, but the next licence was not applied for until August of that year and not issued until March 2022.
18. If the appellant's case had been that the existing use of the building is lawful on the basis of 'immunity', given the time limits for taking enforcement action set out under s171B of the TCPA90, I would have needed to decide whether the existing or a materially similar use had probably taken place without significant interruption for a ten year period by the date of the LDC application. I would have had to look at the continuity of the use and evidence of who occupied the building when.
19. However, the Council does not dispute that no. 30 was used as a C4 HMO between October 2016 when the selective licence was granted, and May 2017 when the names of tenants disappear from the records. That is important because the permission granted under Part 3, Class L of the GPDO must be treated as having 'crystallised' when the permitted use began.
20. What I mean by 'crystallised' is that planning permission was granted not just for a theoretical 'change of use...to a use falling within Class C4...' as described by Part 3, Class L, but for the specific change of use of 30 Kipling Street from a single dwellinghouse to use as a 4-bedroom HMO. Where a use is begun with the benefit of planning permission, it does not need to continue without significant interruption thereafter in order to remain lawful. A permitted use may be dormant or inactive.
21. A permitted use can nonetheless cease to be lawful in some circumstances, such as after a material change to a different use. However, the A4D did not change the nature of the use or alter the fact that planning permission was already in place. There is no evidence that the C4 HMO use had probably ceased to be lawful for any reason by the time that the RSL came onto the scene.

Comparison of the Lawful HMO Use and the Existing Residential Use

22. The RSL took over the management of the building in or around October 2023. From then, as noted above, the premises ceased to be describable (and licenced)

² The same PD right existed in November 2014 via Part 3, Class I of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995.

as an HMO. The question for me is whether the change of management gave rise to or reflected a material change in the character of the use taking place, as a matter of fact and degree, so that a new planning permission was required.

23. I shall now look in more detail at what the permitted use of the appeal building as a C4 HMO would have entailed. Various tests for HMOs are set out in the HA04 but, since there is no evidence to the contrary, the property would probably have been subject to the standard test under s254(2).
24. To meet the HMO standard test, it would have been necessary for the building to consist of one or more units of living accommodation that were **not** self-contained flats. The units or bedrooms could not contain the 'three basic amenities' – a toilet, personal washing facilities and cooking facilities – for the occupier's exclusive use.
25. The standard test also means that the building, when in C4 HMO use, must have been occupied by persons who did not form a single household. They must have occupied the accommodation as their only or main residence, and their occupation must have constituted the only use of the accommodation. At least one of the occupiers would have been liable for payment of rent or provision of some other consideration, and one or more of the basic amenities would have been lacking in the living accommodation or shared by two or more households.
26. There is no evidence that those conditions were not met when no.30 was used as a C4 HMO, or that they are not met today. My observations of the building were that:
 - The ground floor contains Bedroom 1 and a shared living/dining room which leads to a separate shared kitchen and then a yard where shared refuse and recycling bins are stored.
 - The first floor contains Bedrooms 2, 3 and 4 plus a shared bathroom.
 - Bedrooms 1, 2 and 4 contain bedroom and often other furniture, but no en-suite bathrooms or kitchen areas. I was unable to see inside Bedroom 3, but it is also unlikely to include private toilet, washing or cooking facilities given the size and layout of the building.
 - The fixtures and fittings were in a condition to suggest that the building has remained laid out as it is for several years.
 - There were two fridge freezers in the kitchen. Beyond a laptop on the living room table, perhaps belonging to the occupier who was cooking at the time of my visit, I saw few personal effects outside of the bedrooms. It appeared that the occupiers are unrelated and do not share items such as food.
27. I deduce that, on the balance of probabilities, the appeal building contains and has contained since around October 2016, four units of living accommodation of which none contain any of the three basic amenities. The kitchen, bathroom and living room are shared by occupiers who probably do not form a single household. I also find that the existing occupiers, as the tenants of an RSL, probably pay rent to reside in the property and do not have any other home.
28. It is still possible that the existing use might be closer to something outside of the lawful C4 use. However, the Council has not described any complaints or other evidence which might suggest that there has been a material change to the character of the activities taking place in or around the building. I have considered

the submissions relating to use class C2, which covers residential accommodation and care to people in need of care. But there is nothing to contradict the appellant's claim that none of the occupiers need more than "minimal visiting support". The provision of care is probably not part of the existing use of the building.

Conclusion

29. On the evidence before me, I find that the change of use of 30 Kipling Street from use as a single dwellinghouse falling within use class C3 to use as a small house in multiple occupation falling within use class C4 probably took place on 10 October 2016 or thereabouts with the benefit of planning permission granted by the GPDO.
30. The permitted C4 use did not cease to be lawful through the A4D or interruptions to the use. The existing use of the building is not as an HMO, because it is managed by an RSL. However, the building is still used for residential purposes by four unrelated tenants who have private bedrooms, share a kitchen, bathroom and living room, and do not require the provision of on-site care. There has probably not been any material change in the appearance or layout of the building, how it is occupied, the activities carried out inside or in any off-site effects of the use.
31. I conclude that the change of use of 30 Kipling Street from the permitted use as a C4 HMO to the existing use as 4-bedroom residential accommodation that is managed by a registered social landlord and occupied by up to 4 unrelated persons, sharing kitchen, bathroom and living facilities, as their sole or main place of residence did not, on the balance of probabilities, constitute a material change of use that required planning permission.
32. It follows that enforcement action could not be taken for the purposes of s191(2) of the TCPA90 in respect of the use of 30 Kipling Street as 4-bedroom residential accommodation that is managed by a registered social landlord and occupied by up to 4 unrelated persons, sharing kitchen, bathroom and living facilities, as their sole or main place of residence. The Council's decision to refuse to grant an LDC in respect of the existing use was not well-founded. I will exercise the powers transferred to me in s195(2) of the TCPA90 to allow the appeal.
33. For clarity, the location plan attached to this certificate shall be that included in the Council officer's report rather than that submitted by the appellant. The appellant's plan showed the site edged red but did not give the names of any surrounding streets as required for location purposes.

Jean Russell

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 9 July 2025, the use described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown as pinned on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 for the following reason:

The material change of use of the building from a use as a single dwellinghouse to use as a small house in multiple occupation was made in or around October 2016 with the benefit of planning permission granted under Article 3(1) and Part 3, Class L of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. In or around October 2023, the property was transferred to a registered social landlord such that, under Schedule 14 of the Housing Act 2004, it can no longer be described as a house in multiple occupation. However, there has not been a material change of use for which another grant of planning permission is required.

Jean Russell

INSPECTOR

Date: **12 February 2026**

Appeal reference: APP/U4230/X/25/3373684

First Schedule: Use as 4-bedroom residential accommodation that is managed by a registered social landlord and occupied by up to 4 unrelated persons, sharing kitchen, bathroom and living facilities, as their sole or main place of residence.

Second Schedule: 30 Kipling Street, Salford, M7 2FF

IMPORTANT NOTES

This certificate is issued solely for the purpose of s191 of the Town and Country Planning Act 1990 (TCPA90). It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful on the certified date and was not liable to enforcement action under s172 of the TCPA90 on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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 the Lawful Development Certificate dated: **12 February 2026**

By Jean Russell MA FRTPI

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NOT TO SCALE

