



Appeal Decision

Site visit made on 23 February 2026

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 March 2026

Appeal Ref: APP/Z4310/X/25/3365461

9 Rathbone Road, Wavertree, Liverpool L15 4HG

- 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 SGL Group Ltd against the decision of Liverpool City Council.
 - The application ref 24LE/1480, dated 5 June 2024, was refused by notice dated 21 January 2025.
 - 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 a C4 Use Class 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.

Application for costs

2. An application for an award of costs has been made by SGL Group Ltd against Liverpool City Council. That is the subject of a separate decision.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

4. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) and (b) of the Town and Country Planning Act 1990 (the Act) if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. 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 his evidence alone is sufficiently precise and unambiguous.
5. A Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 applies to the area in which the appeal property is located. The Direction came into force on the 17 June 2021 and removes the permitted development rights conferred by Schedule 2, Part 3, Class L(b), ie the change of use of a building from a use falling within Class

C3(dwellinghouses) to a use falling within Class C4(houses in multiple occupation).

6. Given the above, the question is whether the use of the property materially changed to use as a C4 Use Class house in multiple occupation (HMO) after the Class L(b) permitted development rights came into force, but prior to the date on which the Article 4 Direction came into effect (17 June 2021) and therefore had the benefit of planning permission. If it benefitted from planning permission, was that subsequently lost through a material change of use of the property.
7. The Assured Shorthold Tenancy Agreement (ASTA) dated 1 June 2020 identifies three tenants. The term of the ASTA is twelve months, ending on 30 June 2021. This ASTA covers the relevant date of 17 June 2021. The ASTA dated 1 June 2021 includes two of the tenants listed in the 2020 ASTA, plus an additional one; three in total. Again, this is a 12 month tenancy ending 30 June 2022.
8. The ASTA dated 1 June 2022 identifies 4 tenants, all different to the previous tenants. The same four tenants are listed in the 1 June 2023 ASTA. This was a 6 month term, ending on 31 December 2023.
9. The ASTAs therefore indicate the property was occupied by 3 to 4 residents prior to the Article 4 Direction coming into effect. The use of the property as an HMO is further supported by the email correspondence from the Council's HMO Licensing Support Officer. This confirms the appeal property has had an HMO license from February 2019 to August 2021 and then February 2022 to March 2023. These licenses cover the relevant date of 17 June 2021.
10. Therefore, on the balance of probabilities, it has been sufficiently demonstrated that the appeal property was in use as a C4 Use Class HMO prior to the Article 4 Direction coming into effect and therefore had the benefit of planning permission. The question now is whether a material change of use of the appeal property took place following it being brought into use as a C4 Use Class HMO.
11. It was held in *Panton & Farmer v Secretary of State for the Environment* [1999] 78 P&CR 186 that lawful use rights could only be lost by evidence of abandonment; by the formation of a new planning unit; or by way of a material change of use (whether by way of implementation of a further planning permission, or otherwise). It is important to note that 'or otherwise' can mean an unlawful material change of use.
12. In email correspondence between the Council and the appellant, the Council states that '*Information obtained from the Councils Private Sector Housing team confirms the property benefitted from an HMO Licence from 2019 for a maximum of 8 persons with no occupants listed at the time of the Licence application and the Licence from February 2022 was for a maximum of 8 persons with 7 occupants listed at the time of the Licence application.*' However, the Council provide no details of the license applications to indicate who the '7 listed occupants' were. I acknowledge the appellant has provided very limited information on this matter too.
13. A copy of the license certificate, granted on 18 February 2022 states that the license is for not more than '8 persons'. However, that does not mean it must be occupied by 8 persons. The evidence from the ASTAs and the Statutory Declaration of Simon Lawrence (appeal property owner) indicating it was occupied

by 3/4 tenants during this time does not conflict with the HMO license for no more than 8 persons.

14. I have had regard to the appeal decision referred to me by the Council¹. In that appeal, there was no dispute that the property was in use by 8 residents nor that it was occupied by them for 13 months. In this instance, I have found that the C4 Use Class HMO was lawful, due its occupation by 3/4 tenants at the time the Article 4 Direction came into effect. There is very limited evidence it was ever in occupation by 7 residents, if indeed it ever was, and no evidence to indicate how long they occupied it for. Accordingly, there are no similarities between that appeal and the one before me that supports the Council's case. Whilst the onus of proof is upon the appellant, all parties have a duty to substantiate their cases.
15. Notwithstanding that the use of the property as a 7 person HMO may not result in a material change in the use of the property from a C4 Use Class HMO, there is an absence of any evidence substantiating the Council's contention that the property was in use as a 7 person HMO. Therefore, on the evidence before me, on the balance of probabilities, the evidence fails to demonstrate there has been a material change in the use of the appeal property from a C4 Use Class HMO.
16. I find therefore, the evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, the use of the appeal property changed to a C4 Use Class house in multiple occupation after Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 came into force, but before the Article 4 Direction came into effect. The use then continued up to the date of the LDC application.

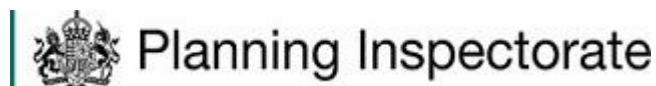
Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A Walker

INSPECTOR

¹ Appeal reference APP/Z4310/X/23/3325954



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 5 June 2024 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 evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, the use of the appeal property changed to a C4 Use Class house in multiple occupation after Schedule 2, Part 3, Class L(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 came into force, but before the Article 4 Direction came into effect. The use then continued up to the date of the LDC application.

Signed

A Walker

Inspector

Date: 19 March 2026

Reference: APP/Z4310/X/25/3365461

First Schedule

C4 Use Class HMO

Second Schedule

Land at 9 Rathbone Road, Liverpool L15 4HG

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 the Lawful Development Certificate dated: 19 March 2026

by A Walker

Land at: 9 Rathbone Road, Liverpool L15 4HG

Reference: APP/Z4310/X/25/3365461

Scale: Not to Scale

