
Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2026

Appeal Ref: APP/Z4310/X/25/3367075

49 Clapham Road, Liverpool L4 2TG

- 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 Marcin Figura against the decision of Liverpool City Council.
 - The application ref 25LE/0547, dated 3 March 2025, was refused by notice dated 29 April 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 existing use as C4 HMO.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Liverpool City Council against Mr Marcin Figura. This application is the subject of a separate decision.

Preliminary Matter

3. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the relevant date for determining whether the existing development is lawful, is the date of the application.

Main Issue

4. The main issue is whether the Council's refusal to issue an LDC was well-founded.

Reasons

Background and Statutory Framework

5. In accordance with section 191(4) and section 192(2) of the 1990 Act, the relevant date for ascertaining whether the existing development is lawful is the date of the LDC application. In an LDC appeal, the onus is on the appellant to make out their case to the standard of the balance of probabilities. Issues of planning merit are not relevant.
6. Section 191(2) states that uses and operations are lawful at any time if (a) 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 (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

7. With respect to sub-paragraph (a) of section 191(2) the time for enforcement action would have expired if the use of the appeal premises as an HMO had subsisted on a substantially uninterrupted basis for a period of ten years or more prior to the date of the LDC application (section 171B(3)), not four years as referenced by the appellant. The four-year time limit applies to use as a single dwellinghouse, not to the use of a dwellinghouse as an HMO.
8. Since it is the appellant's case that the use began in around April 2020, it could not be lawful by virtue of the passage of time. However, action could not be taken if permission already exists for the use.
9. In broad terms a class C4 HMO¹, is a property occupied by between three and six unrelated individuals who share basic amenities like a kitchen, bathroom, or toilet.
10. Article 3, Schedule 2, Part 3, Class L (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out that development consisting of the change of use of a building falling within class C3 of the schedule to the UCO to a use falling within class C4 is permitted development.
11. However, an Article 4 Direction came into force in the area on 17 June 2021. The effect of which was to remove permitted development rights for the change from class C3 to C4. If the use as a class C4 HMO took place before 17 June 2021 it would have benefited from permitted development rights, after that date, express planning permission would have been required.
12. For the appeal to succeed the appellant will need to demonstrate on the balance of probabilities, that the change of use occurred before the confirmation of the Article 4 Direction and continued on a substantially uninterrupted basis, until the date of the application, so as to be immune from enforcement action.

The appellant's evidence

13. The submitted floor plans show three bedrooms and a bathroom on the first floor, and a kitchen, dining room, living room and further bathroom off the kitchen.
14. The appellant submitted a number of Assured Shorthold Tenancy Agreements (ASTAs) dating from June 2020 to April 2025, which were for either three or six-month terms. The appellant also provided an accompanying summary of the room occupancy in a spreadsheet.
15. The Council in their delegated report, provided a table summarising the total occupancy based upon the initial terms of the ASTAs. This shows that from June 2020 – April 2025 the occupancy of the property did not exceed two and there were periods when the property was vacant, including when the Article 4 Direction came into effect.
16. In response the appellant explained that the tenancies were rolled over into contractual periodic tenancies which is purportedly reflected in the spreadsheet. However, and whilst this is not an unusual arrangement and is set out in the ASTAs, in isolation, without corroborating information for example statutory declarations or evidence of rent taken, the ASTAs and spreadsheet do not prove that tenants actually moved in and stayed.

¹ Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO).

17. The Council Tax bills for the period from 1 April 2020 to 31 March 2025 show Council tax, along with a small selection of utility bills for the period from 1 November 2019 – 23 February 2023 were being paid, albeit they do not cover all of the relevant period. Whilst it seems unlikely that these bills would be paid if the property were vacant, together with the mortgage statements, they are not determinative of the actual use and do not assist the appellant's case.
18. The appellant's purported affidavit is a signed statement, to which no sanctions apply and carries limited weight.
19. Planning Practice Guidance states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
20. Based on the evidence before me, I find, as a matter of fact and degree, that the appellant has failed to provide sufficiently precise and unambiguous evidence to demonstrate, on the balance of probability, that the property was in use as a C4 HMO prior to the date when the Article 4 Direction came into effect and that use is lawful.

Conclusion

21. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use as a C4 HMO is 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).

Felicity Thompson

INSPECTOR