



Appeal Decision

Site visit made on 23 February 2026

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 April 2026

Appeal Ref: APP/Z4310/X/25/3364546

58 Picton Road, Wavertree, Liverpool L15 4LH

- 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 Miss Keren O'Rourke against the decision of Liverpool City Council.
 - The application ref 24LE/2792, dated 27 October 2024, was refused by notice dated 5 December 2024.
 - 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 sui generis 7 bed 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.

Main Issue

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

Reasons

3. 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.
4. For the change of use to be authorised through the passage of time, the appellant must show that the use has continued for at least 10 years prior to the date of the application, as set out in s.171B(3) of the Act. If the property was continually in that use for a ten-year period prior to 27 October 2024 (the relevant date), without significant interruption, it would subsequently be lawful.
5. A use could only become lawful if it continued throughout the relevant immunity period, to the extent that the Council could have taken enforcement action at any time during this period. If the use ceased during that period, as a matter of fact

and degree, the time could not count towards immunity and if that use recommenced the clock for the period of immunity would restart.

6. The appellant has provided a summary of tenants that occupied the property each month between April 2008 and October 2024. Between January 2009 and February 2017, the property was occupied by 7/8 tenants for the vast majority of the time. There were several occasions during this time that the occupancy rates fell to 4, 5 and 6 tenants, but these were only for one or two months at a time; not sufficient for a material change in the use of the property to have occurred.
7. From 2017 onwards there were periods when the property was mostly occupied by 6 or 7 tenants. Whilst there were occasions when there were as few as 4 tenants, this was mainly throughout the covid pandemic period and therefore it is understandable that occupancy levels would be lower.
8. The evidence in support of the occupancy levels includes Assured Shorthold Tenancy Agreements (ASTAs). However, these only cover 2018 to 2024. In addition, there are also Council Tax bills; insurance details; gas safety certificates; cleaning invoices; emergency lighting inspection and test certificates; and, fire detection and alarm inspection and servicing report; HMO licenses; and, a statutory declaration from the appellant. However, these sources of evidence provide no indication of how many residents were in occupation during the relevant period.
9. The appellant also provides clarification on the bank statements submitted with the LDC application, supported by a statutory declaration submitted by the appellant's accountant, Graham Potts. This evidence corroborates the summary of the occupancy levels for the property, providing confirmation of payments for individual tenants from 2014. The annual tax return details provided in Graham Potts declaration corresponds with the rental payments indicated on the bank statements provided.
10. Considered individually, none of the above evidence demonstrates the appeal property was occupied as an HMO for the relevant period. However, cumulatively, they paint a more detailed picture with none of the evidence sources contradicting each other. I note the Council tax bills dated between 2015 and 2020 state long term vacant/unoccupied rate. However, the appellant has provided copies of emails sent to the Council's Revenue Services in 2018 and 2019 addressing this issue and informing them of an error with the Council Tax rate indicating the property was vacant. These have not been disputed. They state the property as being occupied during this period of alleged vacancy. The evidence submitted supports this.
11. Whilst there have been fluctuations in the occupancy levels of the HMO, the property is clearly laid out as a 7 bedroom HMO and has been so throughout the relevant period. Although the occupancy levels have fallen below 7 tenants on occasions throughout the 10 year period, this is largely due to the covid pandemic, refurbishment works or due to tenants not proceeding with their tenancy. I do not consider these occasions to change the use of the property from a 7 person HMO.
12. I therefore find, the evidence before me is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, the use of the appeal property materially changed to a 7 bedroom HMO 10 years prior to 27 October 2024 and

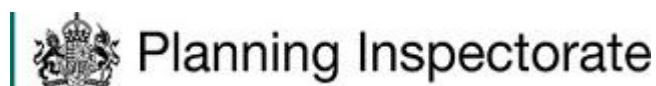
the use then continued for at least 10 years thereafter, without significant interruption and is therefore lawful.

Conclusion

13. For the reasons given above, I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the 7 bedroom HMO is not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

A Walker

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 27 October 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:

It has been demonstrated on the balance of probabilities that the property was in use as an HMO for up to seven people for a continuous period of ten years prior to the date the application was made.

Signed

A Walker

Inspector

Date: **2 April 2026**

Reference: APP/Z4310/X/25/3364546

First Schedule

7 bed HMO

Second Schedule

58 Picton Road, Wavertree, Liverpool L15 4LH

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: **2 April 2026**

by **A Walker**

Land at: **58 Picton Road, Wavertree, Liverpool L15 4LH**

Reference: **APP/Z4310/X/25/3364546**

Scale: Not to Scale

