



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 April 2026

Appeal Ref: APP/Z4310/X/25/3367666

149 Adelaide Road, Kensington, Liverpool, Merseyside L7 8SH

- 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 Andrew Bennett against the decision of Liverpool City Council.
 - The application ref 24LE/1797, dated 10 July 2024, was refused by notice dated 4 September 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 described as 'Student HMO.'
-

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. The description given in the banner heading is taken from the original application form however, it is evident from the application and appeal submissions that the appellant is seeking to establish that the property is lawfully in use as a class C4¹ HMO. For the purposes of the certificate, I have used this description, in the interests of clarity.
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, including whether the use has caused noise and disturbance to neighbouring residents and there is an over concentration of such uses in the area.

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

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)).
8. It is the appellant's case that the use began in February 2011 however, evidence prior to 2020 is limited to a Council Tax bill for the period 1 April 2019 – 31 March 2020 and an AST for three people for the period 1 August 2019 – 30 June 2020. There is insufficient evidence to demonstrate, on the balance of probabilities, that the property has been in use as a class C4 HMO for a substantially uninterrupted 10-year period prior to the date of the application. However, action could not be taken if permission already exists for the use.
9. 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.
10. 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.
11. 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

12. The appellant's evidence consists of a number of signed completed Assured Shorthold Tenancy Agreements (ASTAs), bank statements, Council Tax Bills, a copy of an HMO license and email correspondence with the Council's Housing Strategy department.
13. From the submitted signed ASTAs together with the bank statements, which detail payments from those named in the ASTAs it seems more likely than not that the property was occupied as a shared property by unrelated individuals. From 1 August 2020 to 31 July 2022 the property was occupied by four individuals, briefly five from July to August 2022.
14. From 20 August 2022 – 20 November 2022 there were two occupants, and three between 20 November 2022 and 31 December 2022. From 1 July 2023 to 23 June 2024 there were four occupants and from around the end of June 2024 to 31

December 2024 there were five occupants. Finally, from around January 2025 to June 2025 there were five occupants.

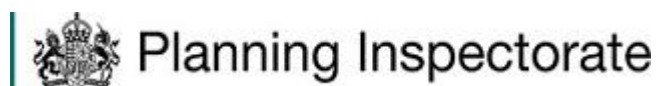
15. The submitted Council Tax bills show that the property held student exemptions from 1 April 2021 – 31 March 2022, 1 April 2022 - 31 March 2023, 1 July 2023 – 31 March 2024 and 1 April 2024 – 31 March 2025. This further supports the appellant's case that the property was occupied by unrelated individuals, in this case, students.
16. Although it appears there was an approximately three-month period in 2022 where there were only two occupants, based on the appellant's submissions, it is more likely than not the property was, at that point in time, already lawfully in use as a class C4 HMO.
17. That the property was not fully occupied does not necessarily mean that it ceased to be an HMO, and there are likely to be fluctuations in occupancy levels. It was stated in the ASTAs that "The Landlord lets and the Tenant takes ALL THOSE furnished premises shortly known as 149 Adelaide Road, Liverpool, L78SH (in common with up to three other people) ("the Premises")". Accordingly, the evidence indicates the property was still being used and available as an HMO.
18. There was also a period of around six months from around the end of January 2023 – July 2023, where it appears, in the absence of ASTAs and bank statements, together with the Council Tax information, the property was vacant, which the appellant has not sought to address.
19. However, there is no evidence that during this short period, the property reverted to use as a single dwellinghouse, that it was put to some other use, nor that the appellant intended to cease the use. Accordingly, the use was not abandoned, and the lawful use was not lost.
20. Overall, as a matter of fact and degree, the evidence presented demonstrates, on the balance of probabilities, that the use as a class C4 HMO began before the Article 4 Direction came into force and continued until the date of the application.

Conclusion

21. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for the use as a class C4 HMO is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Felicity Thompson

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 10 July 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 presented indicates, on the balance of probabilities, that the use as a class C4 HMO began before the Article 4 Direction came into force and continued until the date of the application.

Signed

Felicity Thompson

Inspector

Date: 09 April 2026

Reference: APP/Z4310/X/25/3367666

First Schedule

Class C4 HMO

Second Schedule

Land at 149 Adelaide Road, Kensington, Liverpool, Merseyside L7 8SH

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: 09 April 2026

by Felicity Thompson

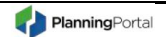
Land at: 149 Adelaide Road, Kensington, Liverpool, Merseyside L7 8SH

Reference: APP/Z4310/X/25/3367666

Scale: Not to Scale

Location Plan

Site Address: 149, Adelaide Road, Liverpool, L7 8SH



Date Produced: 08-Jul-2024

Scale: 1:1250 @A4



Planning Portal Reference: PP-13226617v1

