



Appeal Decision

Site visit made on 12 May 2026

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 26TH May 2026

APP/M4320/X/25/3363146

101 South Road, Waterloo, Liverpool L22 0LS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by Sefton Metropolitan Borough Council to grant a certificate of lawful use or development.
- The appeal was made by Harold Jones Ltd.
- The application, reference DC/2025/00050, was dated 13 January 2025. It was refused by a notice dated 6 March 2025.
- The Application for a Certificate of Lawful Development, (LDC), was for the proposed Introduction of one additional HMO room into the existing 7 bedroom sui generis HMO at 101 South Road, Waterloo, Liverpool L22 0LS.

Summary of decision: The appeal is allowed and a certificate of lawful use is issued in the terms set out below in the Formal Decision.

Costs application

1. The Appellants, Harold Jones Ltd, made an application for an award of costs against Sefton Metropolitan Borough Council. That application is the subject of a separate decision.

Appeal property

2. The appeal concerns No. 101 South Road, Waterloo, a large 3 storey end of terrace property at the corner of the junction of South Road with Neville Road. There is a cake shop at the ground floor corner of the building. The existing lawful use of the remainder of the property is as a House in Multiple Occupation, (HMO), for 7 persons, (Appeal decision APP/M4320/W/24/3346410, 11 December 2024, change of use of the rear part of the ground floor and the whole of the 1st and 2nd floors to form a 7 bedroom [7 person] sui generis HMO).
3. The 7 HMO bedrooms are on the 1st and 2nd floors. There are service areas, a kitchen and outdoor amenity area to the rear of the ground floor to support the HMO use.
4. Each HMO bedroom has a small private shower/w.c. room. A rear room on the 2nd floor is shown on the layout plan as a lounge/dining room for shared use by residents of No. 101. At the time of my visit, this room had been converted to an HMO bedroom and was let to a new, 8th, resident.

Considerations

5. The Council's reason for refusing to issue an LDC for occupation by the additional 8th person said the proposal would result in a significant alteration to the character and intensity of the property's use. It would constitute development under s.55 of the Act.

6. S.55 of the Act - Meaning of “development” and “new development” says:
“development” means the carrying out of building, engineering, mining or other operations in, on, over or under land; or the making of any material change in the use of any buildings or other land.
7. The LDC application proposed no operational development. As the Council pointed out, the scheme asserts the lawfulness of the conversion of the 2nd floor communal lounge/dining room to an additional HMO bedroom, bringing the total number of HMO rooms with individual occupiers to 8. Council officers regarded shared amenity spaces as critical benefits to occupiers’ living conditions and general well-being. They said losing a communal room to a new bedroom increased occupancy numbers and reduced shared spaces. It intensified the property’s HMO’s use beyond its original capacity or permission. It thereby degraded occupants’ living conditions. That was a key planning consideration, (NPPF para 135 (f).). Accommodating an 8th person amounted to a significant shift in character of the property. The adverse effect or impact on amenity, both indoors and outdoors, would intensify the property’s use beyond acceptable limits.
8. I need to consider whether use of one additional HMO bedroom at No. 101 South Road, Waterloo would amount to a material change of the use of the building.
9. The difficulty with the Council’s position is that their concern was mostly based upon the loss of the communal space resulting in harm to living conditions and intensifying the use of the property as an HMO beyond what they deemed to be acceptable limits. However, such considerations are more applicable to a planning application where conditions could be applied to control, for instance, the level of use. The legal principles that apply in this LDC application case go to whether the intensification of the HMO use of No. 101 would amount to a material change of use if and where that causes the character of the use to change in a fundamental way. In the case of *Hertfordshire CC v SSCLG & Metal and Waste Recycling Ltd* [2012] EWCA Civ 1473, the Court of Appeal held that: *‘What must be determined is whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in a such a change in the definable character of the use that it amounts to a material change of use’.*
10. *Hertfordshire* showed that planning authorities must demonstrate a fundamental alteration in the nature of operations, (in that case dealing with scrap metals), not just higher volumes of the same activity, in order to demonstrate a material change of use.
11. Courts have held that, in planning terms, intensification involves a change to *‘something different’*. What one is required to decide is whether there has been a material change of use by reference to the ‘before’ and ‘after’ situation. The intensification of the use must be of such a degree as to bring about a material change in the character of the use. In the present instance, loss of the shared lounge/dining space might, to some degree, reduce living conditions. But no development would be involved. It would remain a sui generis HMO if the lounge/dining room was occupied by another tenant.
12. There would be no change in the character of the HMO use of No. 101 such that a material change of use would have occurred as defined in s.55 of the Act – ‘or the making of any material change in the use of any buildings or other land.’.

Conclusion

13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of: 'the proposed Introduction of one additional HMO room into the existing 7 bedroom sui generis HMO at 101 South Road, Waterloo, Liverpool L22 0LS', was 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 Certificate of Lawfulness is attached to this decision.

FORMAL DECISION

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development on the application made for the proposed Introduction of one additional HMO room into the existing 7 bedroom sui generis HMO at 101 South Road, Waterloo, Liverpool L22 0LS was not well founded and that the appeal should succeed. I exercise accordingly the powers transferred to me in section 195(2)(a) of the 1990 Act as amended.

John Whalley

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 13 January 2025 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, was lawful within the meaning of section 192(1)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed Introduction of one additional HMO room into the existing 7 bedroom sui generis HMO would not amount to development as described in s.55 of the Town and Country Planning Act 1990 as amended.

John Whalley

INSPECTOR

Date: 26th May 2026

Reference: APP/M4320/X/25/3363146

First Schedule

The proposed Introduction of one additional HMO room into the existing 7 bedroom sui generis HMO

Second Schedule

No. 101 South Road, Waterloo, Liverpool L22 0LS

IMPORTANT NOTES OVERLEAF
NOTES

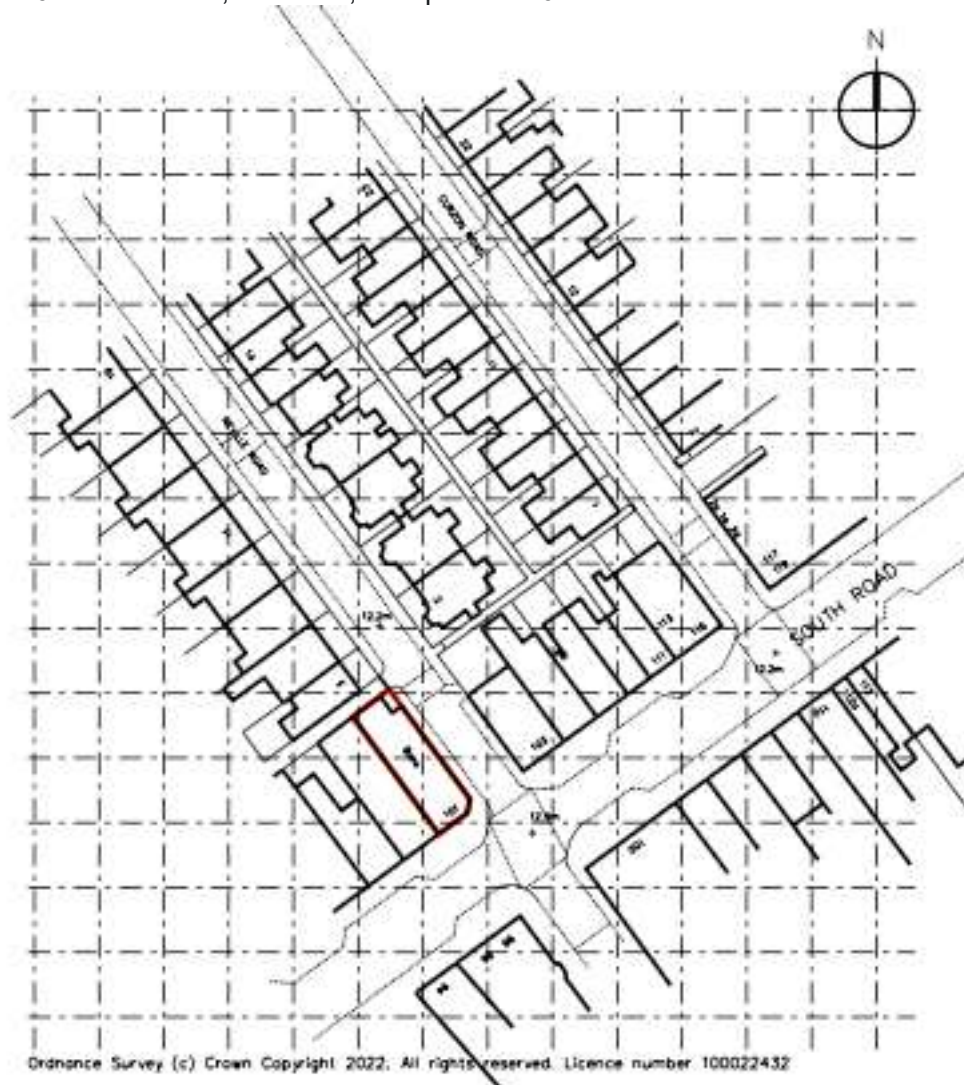
1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule would have been lawful on the certified date and thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Lawful Development Certificate Plan

Appeal reference: APP/M4320/X/25/3363146

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No. 101 South Road, Waterloo, Liverpool L22 0LS



Plan attached to the Lawful Development Certificate - No scale

John Whalley

INSPECTOR