



Appeal Decision

Site visit made on 14 April 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2026

Appeal Ref: APP/Z4310/X/25/3368501

55 Fell Street, Liverpool L7 2QB

- 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 Wavertree Student Homes Ltd against the decision of Liverpool City Council.
 - The application ref 25LE/0273, dated 4 February 2025, was refused by notice dated 2 May 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 use as a C4 Use Class HMO.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to grant a lawful development certificate (LDC) is well-founded.

Reasons

3. Section 191(1)(a) of the Act provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may 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 ii) They do not constitute a contravention of any enforcement notice then in force.
4. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the development would have been lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
5. Section 55(1) of the Act sets out that, subject to the following provisions of this section, in this Act, except where the context otherwise requires, "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.

6. Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) permits development consisting of a change of use of a building from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.
7. An Article 4 Direction came into force on 17 June 2021 covering the area, which removes permitted development rights for development consisting of a 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). An Article 4 Direction simply means that the permission granted by Article 3 of the GPDO does not apply to the development specified in the Direction.
8. The Direction is not retrospective and does not prevent activities or works which are not development. Where the change to a C4 HMO use occurred before 17 June 2021, so long as the property remains in a C4 HMO use, a change in the character of the use would not be development by virtue of section 55(2)(f) of the Act. However, should the use change to a C3 use, due to the Article 4 Direction, a further change to a C4 HMO use would require planning permission where that change is material.
9. The main thrust of the appellant's case is that the material change of use to a C4 HMO occurred before the Article 4 Direction came into force and that there has been no subsequent material change of use. A Use Class C4 HMO is 'use of a dwellinghouse by not more than six residents as a "house in multiple occupation". For the purposes of Class C4, a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies, but otherwise has the same meaning as in section 254 of the 2004 Act.
10. Class C4 is intended to cover small shared dwellinghouses occupied by between three and six unrelated individuals who share basic amenities. A building occupied by fewer than three persons falls outside the definition of an HMO by virtue of Schedule 14 of the Housing Act 2004 (as amended). How the premises has actually been used is therefore of importance.
11. The appeal property comprises a modest mid-terrace property, which is located towards the end of Fell Street. At the time of my visit the property was unoccupied, though it was generally laid out as shown on the floor plans provided by the appellant, with a bedroom, lounge and kitchen on the ground floor and three bedrooms and bathroom on the first floor. There was nothing in particular from either the outside or inside of the property which distinguishes it from a property in a C3 use.
12. Within their application form, the appellant states that the property has been used as a C4 Use Class HMO since March 2016, whereas the Statement of Case details the use starting on 1 July 2020. A statutory declaration, signed by the Director of the owner of the freehold for the appeal property states that the company purchased the property on 11 March 2016 and since then, it has been used exclusively and continuously as a House in Multiple Occupation within Use Class C4 of the GPDO for up to 4 occupiers. It is not clear from the declaration

provided what the Director's involvement with the property was on a day to day basis or whether they know when individuals moved into or out of the property.

13. In support of their case, the appellant has provided me with a series of tenancy agreements dated between 1 July 2020 and 30 June 2025. The tenancy agreements generally run from 1 July to the 30 June the following year, which, in my experience, is typical of student accommodation. These tenancy agreements are asserted to demonstrate exclusive and continuous use of the Property as a C4 HMO. However, while the tenancy agreements show that the individuals who signed them had the right to occupy the property during the relevant period, they do not show that they actually did occupy the property.
14. The appellant has also provided me with evidence of a Council Tax exemption at the property, which supports the appellant's case that the property has been let to students. The property also had a selective licence, which would have been required for all types of rental property, including a family using the house as a Class C3 dwellinghouse, between 8 August 2017 and 8 August 2020 and between 14 April 2023 and 13 April 2028. However, it is not disputed that the property has been used by students or that it has been let out to **up to** 4 people (my emphasis). What is in question is how many students have used it, when and what the implications of that are in terms of the lawfulness of the use of the building.
15. The Council refers to evidence of the neighbours, who are described as stating that the house is currently [sic] occupied by two residents and has been for the past year and that for at least 6 months in 2021, one person lived in the property. While the appellant suggests that the neighbouring occupiers have provided no tangible evidence, as set out above, the burden of proof in an LDC is on the appellant.
16. Rent statements are provided which show that rent was paid for 4 tenants in respect of the property in January 2020 and April 2020, for 3 tenants in October 2020, January 2021 and April 2021, for 2 tenants in October 2021, January 2022 and April 2022, for 3 tenants in October 2022, January 2023 and April 2023 and for 4 tenants in October 2023 and January 2024 and 3 tenants in April 2024, October 2024 and January 2025 (though the amount paid in January 2025 is identified as £0.00).
17. The appellant confirms that, although three tenants signed the original tenancy agreement for the period between July 2021 and June 2022, it was only occupied by two tenants, which appears consistent with the rent payment evidence. Even where payments have been made, individuals may decide to vacate early. This demonstrates the difficulty in relying on tenancy agreements to demonstrate occupation.
18. The appellant asserts that, despite the property being 'under occupied' for a 12-month period, no **material** change of use occurred (my emphasis) and the use still remained as a C4 Use Class HMO. In support of their case, the appellant has drawn my attention to appeal reference APP/Z4310/X/24/3336577, which concerned a property on Boswell Street, Liverpool. In that case, the Inspector held that occupation of the property by a single tenant for approximately six months had not resulted in a material change in the use of the property from a C4 Use Class HMO due to planned repair works, that required the property to be vacant. However, I do not have full details of that case. Furthermore, the circumstances of

that case appear very different to the appeal before me: there were no planned works in the case before me and the period of occupation by no more than 2 individuals is likely to have been significantly longer.

19. For whatever reason, it seems from the evidence in the case before me that no more than two individuals resided in the appeal property for a period of 12 months after the Article 4 Direction came into force. This is a significant period of time. The appellant states that the property remained set out as a C4 Use Class HMO and continued to be advertised as such for the next academic year. However, there is very little about the way in which the property is laid out to distinguish it from a C3 use. I see no reason why the two students using the property would not have used the remaining rooms, whether for storage, study or some other activity, in the same way a family would have used the property. Moreover, occupation of the property by two individuals would not have met the definition of a C4 HMO by virtue of Schedule 14 of the Housing Act 2004 (as amended).
20. It seems likely to me that the use of the property between October 2021 (albeit the term of tenancy started on 1 July 2021) and 30 June 2022 by 2 students had resulted in a change of use of the property. Following that change, however, due to the Article 4 Direction, planning permission would have been required for a **material** change to a C4 use (my emphasis). Whether there has been a material change of use depends upon whether there has been a change in the character of the use of the land, as a matter of fact and degree.
21. The evidence shows that the property was let out to 3 students from 1 July 2022 to 30 June 2023. Rents were collected for 3 tenants in October 2022, January 2023 and April 2023, suggesting that 3 students may have occupied the premises during that period. However, even if I assume that 3 people did reside in the property during that period, I have very little evidence as to how the property has actually been used to enable me to understand whether there has been a change in the character of the use and if so, whether that change was material.
22. The Council refers to objections made by neighbouring residents. The comments made relate to both the appeal property and other HMO houses on Fell Street and in adjoining streets and so it is difficult to understand from the evidence provided what the character of the use was when it was used by 2 students (or 1 student, as suggested by a neighbour) and what it was when it was used by 3 students.
23. Although reference is made to nuisance noise and parties even when there have been 2 residents, it seems to me that 1 or 2 residents are likely to generate less noise, less comings and goings and less demand for parking than 3 residents. It has therefore not been shown that the change to a C4 HMO following its occupation by 2 students (or 1, student, as suggested by a neighbour) was not a material change of use or that planning permission was not required.
24. The appellant has drawn my attention to an approved application at Hawarden Avenue, which sought to confirm the lawful use of the property as a *sui generis* 9 bed HMO, reference 24LE/3272. That property was underoccupied between July 2020 and June 2021, with 8 occupants occupying it during this period. In that case, the case officer opined that the room could have been rented out had a suitable tenant been found and had a HMO licence during this period for 9 persons. It was found that it was not considered to be a material change in use of the site as a nine person HMO. While I do not have full details of that case before me, it seems

to me that this was a finding open to the Council to make. However, it is not comparable to the appeal before me because that case concerned a *sui generis* HMO which, it seems, remained a *sui generis* HMO throughout the relevant period.

25. For the reasons given above, the appellant has not shown, with evidence that is sufficiently precise and unambiguous, on the balance of probabilities, that the use of the property as a Class C4 HMO was lawful at the date of the LDC application and so the appeal must fail.

Conclusion

26. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a C4 Use Class 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).

M Savage

INSPECTOR