



Appeal Decision

Site visit made on 3 June 2026

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03rd June 2026

Appeal Ref: APP/N4205/X/25/3376785

39 Worsley Road, Farnworth, Bolton, BL4 9LR

- 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 Cory Haworth of Econova Developments Ltd against the decision of Bolton Metropolitan Borough Council.
 - The application ref 21248/25, dated 20 October 2025, was refused by notice dated 10 December 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 a small house in multiple occupation (HMO) (Use Class C4).
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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.

Procedural Matters

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proof in respect of LDC applications made under section 191 of the Act lies with the applicant and the relevant test of the evidence is on the balance of probability.
3. The 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.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether on the date of the LDC application No. 39 Worsley Road, Bolton, BL4 9LR was lawfully a house in multiple occupation (HMO) as defined in use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO).

Reasons

5. On 13 June 2025, the Council made a Direction pursuant to Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) in respect of the whole of the Borough of Bolton and removing permitted development rights in respect of the change of use of a building from a use falling within Class C3 (dwellinghouses) of the UCO to a use falling within Class C4 (HMO) of the UCO. The claim made by the appellant is that the appeal property was being used as a class C4 HMO (up to four occupants) on 16 March 2025 and hence the restrictions imposed in respect of the 13 June 2025 Article 4(1) Direction are not applicable. In this regard, the appellant claims that on the date of the LDC application, the property was lawfully being used as a class C4 HMO.
6. In support of the appeal, the appellant has submitted various pieces of evidence including tenancy agreements; bank statements; a PAT testing certificate; an insurance policy; a landlord gas safety certificate; email correspondence relating to a tenant at 39 Worsley Road dated 19 July 2025; floor plans of the property; and a supporting statement.
7. Class C4 of the UCO defines an HMO as not including '*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 Housing Act 2004*'. The appellant has submitted existing floorplans as part of the LDC application which are claimed to reflect what was in place on 16 March 2025, i.e., before the Article 4 Direction was made.
8. In respect of the 'Standard Test' for an HMO, as outlined in section 254 of the Housing Act 2004, it is noteworthy that on the ground floor it shows bedroom 1 with a kitchenette (with a note saying '*no hob/cooker*'), an ensuite, and a lounge, and then a '*shared*' bathroom, '*communal*' dining, and a '*communal*' kitchen/lounge (the floor plan shows a hob); on the first floor it shows bedroom 2 with an en-suite and store, then a shared bathroom, and with bedroom 3 with a kitchenette (with a note saying '*no hob/cooker*'; and on the second floor it shows bedroom 4 with a kitchenette (with a note saying '*no hob/cooker*').
9. Section 254 of Housing Act 2004 states that the Standard Test is '*two or more households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities*'. Basic amenities are defined as a '*toilet, personal washing facilities or cooking facilities*'.
10. It is stated that the Council's Housing Standards Team visited the property on 4 November 2025. It comments that on this date the property was in use as '*4 self-contained flats*' and that '*it was observed that the curtilage had been divided with picket fencing to provide separate garden space for each of the units*'.
11. The Housing Standards Team visit post-dates the Article 4 Direction being made. Moreover, the comments made by the Housing Standards Team are lacking in precision in terms of exactly what was seen (e.g., photographs or a detailed description/use of each room). There is no comment made about the existence of the communal kitchen/lounge/dining rooms or the shared bathrooms as shown on the existing floorplans, and as witnessed on my site visit.

12. I do not know if as part of its site visit the Housing Standards Team considered the kitchenettes in terms of the provision of cooking facilities, or indeed what they noticed in terms of the rooms which are annotated as a '*communal lounge/kitchen*', '*communal dining*' and '*shared bathroom*' on the submitted existing floor plans. The Council's evidence is lacking in terms of a detailed assessment of whether the property was laid out for use as an HMO prior to the Article 4 Direction being made, or indeed on 4 November 2025, and with reference to the definition of an HMO in section 254 of the Housing Act 2004.
13. On my site visit, I was not able to view the top floor of the property as the door to the staircase was locked. However, I was able to see the rest of the property which was laid out and configured in accordance with the existing floorplans submitted by the appellant. The appellant claims that the existing floor plans reflect how the property was laid out (including facilities provided) prior to the Article 4 Direction being made. This included communal areas and a shared bathroom as well as kitchenettes without a hob/cooker.
14. My site visit revealed that the communal lounge/kitchen area did indeed have a hob/cooker and what would ordinarily be considered '*cooking facilities*'. I did notice that air fryers were in place in a couple of the bedrooms. However, there is no precise evidence before me to suggest that such air fryers were in place prior to or on the date of LDC application. In any event, I am not persuaded that an air fryer could reasonably be considered to comprise '*cooking facilities*' on its own. While I could not view the upper floor of the property, I was nonetheless able to observe on my site visit that two kitchenette areas were without a hob/cooker.
15. In my judgement, and, on the balance of probability, I find that the appellant's evidence is sufficiently precise and unambiguous from the point of view of demonstrating that the building was laid out with facilities for use as an HMO, and not self-contained flats, prior to the Article 4 Direction being made. The Council's evidence is not sufficient to contradict or otherwise make the applicant's version of events less than probable in this regard.
16. It is necessary that I also consider, on the balance of probability, whether the evidence supports the contention that the property was actually in use as an HMO on 16 March 2026 and prior to the Article 4 Direction being made on 13 June 2025. The appellant has submitted four '*HMO Assured Short Hold Tenancy Agreements*' (my emphasis) which are signed by the landlord and tenants. These agreements pre-date the Article 4 direction date. Three tenants were required to make rent payments on 16 March 2025, and one tenant was required to make a rent payment on 12 June 2025.
17. Bank statement details show rent payments being made in the name of the individual tenants which, in my judgement, is a good indication, on the balance of probability, of the likelihood of occupation being made by such individuals in accordance with tenancy agreement dates. There is nothing before me to suggest that such individuals are members of the same family. Indeed, there is no evidence before me to suggest that any of the individuals have formed part of a '*single household*' with reference to section 258(2)(a)/(b) of the Housing Act 2004.
18. The evidence of use of the property as an HMO is also supported with reference to the appellant's insurance for the property which refers to a '*residential tenancy requirement*'. In addition, the submitted landlord gas safety certificate, dated 4 April

2025, relates to a single boiler and single gas metre. I afford some weight to the appellant's point that it is more likely than not that use of the property as separate flats would have had separate systems or sub-metering in place. While these matters are not in themselves decisive in terms of suitably demonstrating use of the property as an HMO prior to the Article 4 Direction being made, they do nonetheless lend some additional support, when considered alongside the tenancy agreements, bank statement details, and the existing floor plans, for me to conclude, on the balance of probability, that on the date of the LDC application the property was lawfully in use as a class C4 HMO.

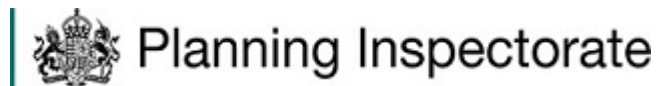
19. In reaching the above conclusion, I have considered the comment made by the Housing Standards Team that when they visited the property on 4 November 2025 *'it was observed that the curtilage had been divided with picket fencing to provide separate garden space for each of the units'*. I do not know from the evidence that is before me if this arrangement was in place prior to the Article 4 Direction being made.
20. In any event, in this case I do not find the above to be a decisive matter in terms of considering whether the property was in use as an HMO and with reference to the definition of an HMO in the Housing Act 2004. Moreover, it is noteworthy that the appellant has commented that *'the small, fenced garden sections are accessed via the communal dining room and were used for pets, not to form independent curtilages'*. I have no reason to doubt the claim made by the appellant about this matter and note that the tenancy agreements do permit pets in the property. Indeed, I noticed that a dog was being kept in one of the bedrooms as part of my site visit.

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 of development for the use of the property as a small house in multiple occupation (HMO) (Use Class C4) 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).

D Hartley

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 20 October 2025 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:

On the balance of probability, the property was in use as a class C4 HMO prior to the Article 4 Direction being made on 13 June 2025. On the date of the LDC application, the property was therefore lawfully in use as a class C4 HMO.

Signed

D Hartley

Inspector

Date: 03rd June 2026

Reference: APP/N4205/X/25/3376785

First Schedule

Small house in multiple occupation (HMO) (Use Class C4)

Second Schedule

Land at 39 Worsley Road, Farnworth, Bolton, BL4 9LR

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.

Scale: Not to Scale

