



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 09 June 2026

Appeal Ref: APP/C4615/X/25/3368231

154 Coombs Road, Halesowen, West Midlands B62 8AF

- 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 Wayne Brown against the decision of Dudley Metropolitan Borough Council.
 - The application ref P25/0287, dated 12 May 2025, was refused by notice dated 29 May 2025.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act).
 - The use for which a certificate of lawful use or development is sought is for the existing use of the property as a C4 HMO prior to Article 4 coming into the Borough of Dudley.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the required information is included with the application and appeal documents, a decision can be reached on the papers. The decision turns solely on evidence and lawfulness, not on planning merits.
3. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) provides for the use of a dwellinghouse as a “house in multiple occupation” (small HMO) by not more than 6 residents; that is up to 6 unrelated individuals who share basic amenities such as a bathroom and kitchen.

Main Issue

4. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the GPDO”) provides that planning permission is granted for the classes of development described in Schedule 2. Relevant to this appeal is Class L of Part 3 which allows for a change of use from a dwellinghouse (Class C3) to a small HMO (Class C4). For the purposes of Part 3, a flat can fall within the definition of a dwellinghouse¹. However, on 15 September 2023 a Direction under Article 4(1) came into force withdrawing permitted development rights for a change of use from C3 to C4, meaning that after that date express planning permission is required.
5. The main issue for this appeal is whether the Council’s decision to refuse to grant an LDC was well-founded. This turns on whether it can be established, on the balance of probabilities, that the property was already in lawful use as a Class C4 HMO prior to the commencement of the Article 4 Direction.

¹ Article 2(1) of the GPDO

Reasons

6. Section 191(2) of the 1990 Act sets out that uses and operations are lawful at any time if no enforcement action may be taken and they do not contravene any enforcement notice then in force. In an application under section 191, the burden of proof rests firmly with the applicant (now appellant) to make their case. If a local planning authority has no evidence to contradict the appellant's version of events or make it less than probable, there is no reason to refuse the application, provided the evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
7. There is no evidence that the use constitutes a contravention of any enforcement notice. Furthermore, it is not in dispute that, at the time of the LDC application, the appeal property had been in continuous use as an HMO within use class C4 since approximately August 2022. The Council also does not dispute that the HMO use pre-dates the Article 4 Direction. I accept this position.
8. The Council's view is that prior to the HMO use, the property was in use as two self-contained flats and therefore would not have benefitted from a deemed planning permission granted under Class L for its use to change to a single HMO use. There is no evidence of any planning permission for the change of use to flats and there is no evidence regarding for how long that use occurred or whether it may have become lawful through the passage of time.
9. The appellant accepts that the property had been used as two flats at some stage but contends that the use had ceased when they acquired the property in May 2020. Following the cessation of the use as two flats, they consider that the property reverted to its lawful use as a single dwellinghouse, with the VOA re-banding it as such in October 2020. This position thereby enabled reliance on Class L for a change of use from Class C3 to Class C4, prior to the Article 4 Direction. Notwithstanding this, they also maintain that because the use of the property as flats was unlawful, it is the lawful use, as a single dwellinghouse, upon which the LDC should be determined.
10. Although the use as two flats may have ceased by the time the appellant acquired the property, and photographs dated May and June 2020 show that the ground floor kitchen and a boiler had been removed, physical reconfiguration does not alone demonstrate that the property had been 'occupied or used' as a single dwellinghouse. The key issue is actual use not capability and while the re-banding by the VOA may well indicate that the use as flats had ceased, there is no clear evidence of occupation of the property as a single dwellinghouse following the cessation of the use as flats. Such evidence could be in the form of a single-family tenancy agreement, owner-occupation evidence or utility billing showing single household living.
11. Furthermore, even though the appellant considers that the use of the flats was likely to have been unlawful, ceasing an unlawful use does not automatically establish a lawful one. Reference is made to section 57(4) of the 1990 Act which provides that "where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which [...] it could lawfully have been used if that development had not been carried out." And this seems to be relied on as a fall-back option. However,

this provision relates to compliance following an enforcement notice and does not establish lawfulness for the purposes of a section 191 application.

12. Further reference is made to *Ocado Retail Ltd v London Borough of Islington* [2021] EWHC 1509 (Admin) and *SSETR v Hughes* (2000) 80 P&CR 397, which establish that a lawful use right, once accrued, is not lost merely because it is not exercised, and may only be extinguished by events such as abandonment. They do not, however, assist the appellant in this case because they apply only where a lawful use has first been established. Here, the difficulty is not whether a lawful use has been lost or abandoned, but that the appellant has failed to demonstrate the lawful use of the property immediately prior to the HMO use. Accordingly, reliance on principles of continuity and abandonment is misplaced.
13. The appellant also suggests that the use of the flats may have been temporary and has referred to an appeal decision² to support their view that the use as two flats should be treated as a mere “snapshot in time”, such that the lawful use of the property remained as a single dwellinghouse. However, I attach very limited weight to this decision in the determination of the present appeal.
14. That case concerned a planning permission appeal and not the determination of lawfulness under section 191 of the 1990 Act. The Inspector’s findings were made in the context of assessing the planning merits of development against an established and undisputed lawful use. In that case, the Inspector was satisfied, on the evidence, that the authorised use of the building had not materially changed, notwithstanding any temporary or incidental alternative use.
15. By contrast, in the present appeal the lawful use of the property is itself the principal matter in dispute. Accordingly, the circumstances of the cited appeal decision are materially different. The principle that a short-term or incidental use may not displace an established lawful use cannot be applied where, as here, the existence and continuity of the lawful use itself has not been demonstrated. The decision therefore does not assist the appellant’s case and does not alter my conclusion that the lawful use of the property immediately prior to its occupation as an HMO has not been satisfactorily established.
16. On the evidence before me, I cannot determine with sufficient certainty what the lawful use of the property was immediately prior to the HMO use. In the absence of clear evidence that the property was in a lawful C3 use, the appellant cannot rely on Class L permitted development rights. Accordingly, the lawfulness of the HMO use cannot be established on the basis of deemed planning permission.
17. The appellant further suggests that, if the property had been in use as two flats, each flat could have benefitted from permitted development rights to change to an HMO. However, Article 3(5) of the GPDO makes it clear that the permission granted by the Order in connection with an existing use does not apply if the use is unlawful. In this case, as the appellant accepts, the material change of use of the property from a single dwellinghouse to two separate flats took place without the necessary grant of planning permission, and so was unlawful. This means that the two flats could not benefit from any permitted development right to change to an HMO.

² APP/D1265/W/24/3353523

18. If the appellant can produce more substantial and cogent evidence, it would remain open to them to submit a further application, which the Council would be required to determine on its merits.

Conclusion

19. For the reasons given above I conclude, on the available evidence, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the dwelling as an HMO (Class C4) was well-founded. The appeal cannot succeed and I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR