



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: 23 June 2026

Appeal Ref: APP/Z4310/X/25/3367739

80 Ash Grove, Picton, Liverpool L15 1ET

- 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 SGL Group Ltd against the decision of Liverpool City Council.
 - The application ref 25LE/0959, dated 2 April 2025, was refused by notice dated 9 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 C4 Use Class HMO.
-

Decision

1. The appeal is dismissed.

Background

2. The Town and Country Planning (Use Classes) Order 1987 (as amended)(the UCO) defines Class C4 Houses in multiple occupation as use of a dwellinghouse by not more than six residents as a “house in multiple occupation”. It states that, 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 Housing Act 2004.
3. 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.
4. 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. The Direction is not retrospective and does not prevent activities or works which are not development.

Main Issue

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

Reasons

6. 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.

7. The main thrust of the appellant's case is that the change of use to a C4 Use Class HMO was lawful at the date of application because, when the change occurred, it was permitted by the GPDO. It is not disputed that the appeal site is located within an area which is subject to an Article 4 Direction which has the effect of revoking 'permitted development' rights conferred by Schedule 2, Part 3, Class L(b) of the GPDO. This appeal will therefore turn on whether the change of use of the premises to a C4 HMO occurred before the Article 4 Direction came into force on 17 June 2021.
8. 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.
9. This appeal site has been the subject of a previous appeal made under section 195 of the Act against a refusal to grant a certificate of lawful use or development for a House of Multiple Occupation (HMO) for 3-6 persons (Use Class C4), reference APP/Z4310/X/24/3345384. That appeal was dismissed on 12 February 2025 because the Inspector found that the evidence was not sufficiently precise and unambiguous to show, on the balance of probabilities, that the material change of use of the property to a small HMO (Use Class C4) occurred before the Article 4(1) Direction came into force. The appellant has sought to respond to and address the Inspector's concerns through this appeal.
10. There were two main arguments which the Inspector considered: Firstly, whether the appellant could show that the material change of use occurred before the appellant purchased the property in 2021 and before renovation works were carried out. Secondly, whether the appellant could show that the material change of use occurred before the Article 4(1) Direction came into force but before actual occupation occurred, bearing in mind that it is possible to find that a change of use took place before a building is actually occupied.
11. The owner of the property has provided a statutory declaration stating that they purchased the property on 15 January 2021 and that at the time of the purchase, it was used as a small HMO (C4 Use Class). However, this contradicts the date provided in the application form, which indicates that the use or activity was begun on 15 January 2021. Furthermore, it is not clear what the owner of the property means by the term, or what knowledge they had of the use of the property prior to their purchase of it.
12. In support of their contention that the appeal site was used as a small HMO, the appellant has provided me with an application form dated 11 November 2020,

which sought full planning permission for the change of use to a 7-bed HMO. Within section 6 of the application form, the existing use of the site is described as 'HMO'. The form was signed by an agent, with details provided. However, it is not clear from the application form what the agent means by the term 'HMO' and so I afford this limited weight.

13. The appellant has submitted a previous application, which was considered by the Council, reference 23LE/2897. The officer report for that application details that a representation was received via email from a member of the public, which advised that *'The property was sold in January 2021. The property was a family house until 2021. The builders started work and finish [sic] in August/September. Students moved in September'*. In response to this, it is stated that various anti-HMO groups exist on social media around Wavertree that recommend submitting comments to say properties were in family use and suggests that these comments be treated as unsubstantiated hearsay. It seems neighbours did not respond to the consultation in respect of application 25LE/0959 and I have not been provided with copies of representations made previously. It is not clear what knowledge the member of the public referred to above had of the property, or what they meant by the term 'family house'. I therefore afford this matter very limited weight.
14. The Council refers to an application form for a previous planning application for the property, 21LP/0141, dated 15 January 2021, which, it is stated, describes the existing use of the property as C3, with Existing Floor Plans accompanying the application stated to indicate only two bedrooms in the dwelling. It is suggested that floor plans submitted with a withdrawn planning application, reference 20F/2937, show the same existing layout (presumably the November 2020 application referred to above). While this may have been an error, since it contradicts the appellant's case that the property was in use as an HMO at that time, information to corroborate the use of the property as an HMO is, in my view, necessary.
15. The appellant states that proof of rent payment between 4th March 2019 and 1st June 2022 has been provided. While details of credits have been provided, it seems that rent payments did not start until July 2021, with what may have been deposit payments made in January and February 2021. Bank statements also show payments were made in January 2021, however, it is not clear what the payments are for (they do not equate to a full month's rent), nor do the payments cover a period prior to 2021.
16. It has not been shown that with evidence which is sufficiently precise and unambiguous, that the change of use to a C4 HMO (whether material or not) had occurred prior to the appellant's purchase of the property in 2021. Nevertheless, as set out above, it is possible to find that a change of use took place before a building is actually occupied. I shall therefore go on to consider whether the change of use of the property to a C4 HMO occurred before the Article 4 Direction, as a matter of fact and degree.
17. The case of *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15 has been drawn to my attention. That case concerned a building which had been constructed as a dwelling and, after a limited period, the owner of the property moved in. In that case, the Court had to decide whether the four year time limit for taking enforcement action in section 171B(2) was applicable, or the 10 year rule provided in section 173B(3) of the Act. It was held that in dealing with "change of

use of any building to use as a single dwelling house”, it is (more) appropriate to look at the matter in the round and to ask what use the building has or of what use it is. This analysis considered the case of *Impey v Secretary of State for the Environment* (1980) 47 P & CR 157, where it was held that change of use to residential development can take place before the premises are used in the ordinary and accepted sense of the word. How much earlier there can be a change of use will be a question of fact and degree.

18. These cases have been considered by other Inspectors in respect of HMOs and, a number of cases have been drawn to my attention, including appeal reference APP/Z4310/X/24/3345384 referred to above. Although the previous Inspector dismissed the appeal, she contrasted it with a similar appeal which she allowed, reference APP/Z4310/X/21/3289727 at Cretan Road, where it was found that the purchase of the property, the contractual arrangement with the property management company, the Assured Shorthold Tenancy Agreements (AST's) and certification, along with the physical works, gave rise to a material change of use prior to the relevant date.
19. The Inspector found the evidence in respect of this appeal site, 80 Ash Grove, to be less compelling due to the physical state of the property in June 2021, the absence of certification relevant to the intended use, and the ambiguity around the date of the earliest AST and associated deposit and rental payments. In respect of another appeal, reference APP/P4605/X/21/3268431, the Inspector commented that the supporting evidence was more persuasive, pointing out that in that case, the HMO licence was in place.
20. Another appeal decision, concerning a property at Sherborne Grove, Birmingham, reference APP/P4605/X/21/3268431 has also been drawn to my attention. That case also concerned an application for a certificate of lawful use or development for a Small House in Multiple Occupation (Use Class C4). A similar approach to that taken in the Cretan Road decision and Kempton Road decision¹, was taken, with the relevant Inspector referring to *Welwyn Hatfield* and *Impey*. While the approach taken by the difference Inspectors is of relevance to the appeal before me, each case turned on its own facts with the relevant question being when the material change of use took place as a matter of fact and degree.
21. It seems from the evidence that following the appellant's purchase of the property, it was decided to carry out works to enable it to be occupied by 6 individuals. The project description used for the building control report is '*Refurbishment and internal structural alterations, single storey rear extension, conversion of loft with rear dormer extension, internal replanning, installation of showers and WC facilities and upgrading of fire safety provisions to HMO dwelling*'.
22. A letter, dated 2 November 2023, states that the property was not vacant during the period of 15 January 2021 to 30 June 2022 and that following purchase of the property in January 2021, renovation works were required before tenants could move in. However, as pointed out by the Council, no tenancy agreements or evidence of occupation have been submitted for the period between January 2021 and June 2021 (an AST and guarantor form provided seems to relate to occupation for the period 1 July 2021 to 30 June 2022) and, given the nature of the works, I consider it unlikely it was occupied during this time.

¹ APP/Z4310/X/22/3294852

23. It is suggested that the Building Regulations Completion Certificate is dated 28 June 2021, just a week after the Article 4 Direction came into effect. However, the Final Certificate is signed and dated 13 July 2021, though it also has a date of 25 July 2021 against paragraph 2, which states *'We, Salus, are Approved Inspectors and the work described above was [the whole] of the work described in an initial notice given by us and dated as opposite.'* The appellant has also provided me with a report by Salus, which includes site notes of the Inspector. In relation to an entry dated 28 June 2021, the report states 'Site visit carried out, works found to be generally complete, internal finishes ongoing, outstanding items in need of completing...2. Glazing within windows and door to kitchen to be reinstated...'.
24. I note that an assessment for an Energy Performance Certificate (EPC) was carried out at the property on 10 June 2021. That document identifies the feature 'Window' as 'Fully double glazed' with a rating of 'Good'. Although this would appear to suggest that double glazing was fitted within the property, a Property Fire Risk Inspection Form for the property, dated 11 June 2021, includes a note saying 'glazing to be reinstated', which is consistent with the Building Inspector's Report.
25. To address the previous Inspector's concerns regarding certification, the appellant has provided copies of various certificates, as well as a statutory declaration that states the property was in a habitable condition with fully fitted and operational facilities and amenities for occupation as an HMO within C4 Use Class by 11 June 2021. The appellant suggests that if the kitchen extension was not weatherproof, the gas and electrics would not have been fitted yet. The Domestic Electrical Installation Certificate, Emergency Lighting Completion Certificates and Design Installation & Commissioning of a fire detection & Alarm System Certificates are dated 14 May 2021, and the gas safety record is dated 26 May 2021.
26. They also suggest that carpet fitting is commonly the final works to be completed, so as not to be damaged or dirtied when finishing decorating works. However, it may have been possible for the building to be secured by other means. I saw during my visit that the kitchen is not fitted with carpet, but a wood effect laminate, which may be less vulnerable to damage and easier to protect during decoration than carpet. Either way, it seems unlikely that at the time of the Building Control Inspector's visit windows were installed in the kitchen.
27. The appellant asserts that the work had been 'substantially completed' (a phrase used in section 171B(1) of the Act, in relation to operations, rather than in relation to a material change of use) and suggests that it would be appropriate to conclude that the glazing was 'temporarily removed' at the time of the Building Control Inspector's visit and was to be 'reinstated' as referenced in their notes. However, no first hand account of the works has been provided (beyond the Building Control Inspector's notes) and so it is not clear what is meant by the term 'temporarily removed'.
28. While I note the use of the term 'reinstated' rather than 'installed', it is not clear from the evidence provided whether the property could have been occupied by 17 June 2021. This is not a minor matter in a residential property. Had the glazing to the kitchen windows and door not been *in situ*, I consider it unlikely occupants would have been able to move into the property. While I recognise it may take time to arrange a final inspection for the works to be signed off, the evidence submitted

suggests that the works were not completed before the Article 4 Direction came into effect.

29. Furthermore, since the property was to be occupied by 6 individuals, an HMO licence would have been required. From the appellant's own evidence, its business is to provide student HMO accommodation across the city. A company experienced in managing such property types would be likely to know such licencing requirements would apply and the penalties associated with letting out an HMO without a such a licence.
30. While it may have been the appellant's intention to let the property to 6 individuals, it seems from the evidence provided that the appellant did not apply for such a licence until 15 July 2021, well after the Article 4 Direction had come into force. The licence was not issued until 2 September 2021. Although rents may have been paid in respect of the property over the summer period, it is not unusual for properties let to students to remain vacant over the summer months, with occupation commencing around the start of the academic year.
31. The payment of rent does not, of itself, demonstrate occupation of the property and, given the premises did not have a licence until September, it seems unlikely to have been occupied by six individuals until then. This is not a case where the property was ready for occupation and tenants moved in a few days after the relevant date. From the evidence, it seems the property was not ready, physically or from a licensing perspective, nor does it seem there was any intention for the property to have been occupied prior to the Article 4 Direction coming into force, given that the HMO licence application was made some time afterwards. Even the tenancy agreements were stated to commence after the relevant date.
32. A supporting legal statement has been provided re Land at 9 Rathbone Road. That statement refers to the case of *Panton & Farmer v Secretary of State for the Environment* [1999] 78 P&CR 186, which held that a use may be 'existing' and lawful for planning purposes even if it is dormant or inactive. I agree that, where a property is already in use as an HMO, renovation works, including substantial works, would not necessarily result in lawful use rights being lost. However, the evidence regarding the use of the property prior to the works is very limited and does not show, on the balance of probabilities, that it was in use as an HMO prior to the works being carried out.
33. Taking into account the physical state of the premises, the fact that the property was not intended to be occupied until after 17 June 2021 and the fact that the licence was not in place until a number of months after, I find, as a matter of fact and degree that the material change of use had not occurred by the date the Article 4 Direction came into force and so the appeal must fail.

Conclusion

34. 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