



Appeal Decision

Site visit made on 1 June 2026

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2026

Appeal Ref: APP/Z4310/X/25/3373943

101 Hartington Road, Toxteth, Liverpool L8 0SF

- 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 P George on behalf of Imperium Property Group Ltd against the decision of Liverpool City Council.
 - The application ref 25LE/2166, dated 13 August 2025, was refused by notice dated 25 September 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 sui generis HMO with 9 No. occupants.
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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 proposed operation which is considered to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

3. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) and (b) of the Town and Country Planning Act 1990 (the Act) if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
4. For the use to be lawful through the passage of time, the appellant must show that the material change of use of the property to a sui generis HMO for up to nine occupants occurred by at least 13 August 2015 and continued thereafter for a period of at least 10 years without significant interruption, as required by section 171B(3) of the Act. Therefore, if the appeal property was continually in that use for a ten-year period prior to 13 August 2025, it would be lawful.

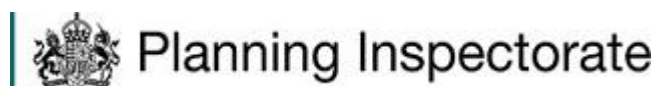
5. The evidence in support of the appellant's case includes copies of three HMO licenses for not more than nine people. These cover the period of 3 March 2015 to 3 March 2026. Although they do not indicate how many occupants there were throughout this period, the licenses clearly show an intention to use the property as a nine person HMO.
6. Copies of Assured Shorthold Tenancy Agreements (ASTAs) covering the period between 1 July 2015 and 29 June 2021 are all signed by nine individuals. For between 2021 and 2026, signed individual tenancy agreements have been provided. During this period, the Covid-19 pandemic was ongoing, which provides a reasonable explanation for the subsequent use of individual tenancy agreements.
7. There are no copies of tenancy agreements for rooms 1 and 3 for the period of 2021 to 2022. However, copies of tenancy deposit protection certificates have been provided for individuals for each of these rooms. I note the certificates do not include the term of the tenancy. Nevertheless, they do provide tenancy commencement dates, which lend support to the appellant's case.
8. The appellant has also provided a signed letter from the office manager of Address Properties Ltd. confirming they have acted as the letting agent for the appeal property since August 2014 and throughout this time it has been occupied by nine unrelated individuals continuously. Whilst the content of the letter is not submitted in the form of a statutory declaration, and therefore cannot be attributed the same weight, it nevertheless corroborates the appellant's evidence.
9. The evidence submitted does not categorically prove the property has been in use as a nine person HMO for a period of 10 years. However, that is not the test. The burden of proof is 'on the balance of probabilities', that is, it is more probable than not. Although the ASTAs do not prove the duration of occupation by individual tenants, as occupants may have vacated the property before their agreements expired, they are nevertheless indicative of occupation. Similar weight can be attached to the HMO licences.
10. On the evidence before me, I am satisfied that it is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the appeal property was in use as an HMO for up to nine occupants by at least 13 August 2015 and that the use continued thereafter for a period of at least 10 years without significant interruption. The use is therefore lawful.

Conclusion

11. For the reasons given above, I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the sui generis HMO for up to nine occupants is 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 Walker

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 13 August 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:

It has been demonstrated on the balance of probabilities that the property was in use as an HMO for up to 9 people for a continuous period of ten years prior to the date the application was made.

Signed

A Walker

Inspector

Date: 13 July 2026

Reference: APP/Z4310/X/25/3373943

First Schedule

A sui generis HMO with 9 No. occupants

Second Schedule

Land at 101 Hartington Road, Toxteth, Liverpool L8 0SF

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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 13 July 2026

by A Walker

Land at: 101 Hartington Road, Toxteth, Liverpool L8 0SF

Reference: APP/Z4310/X/25/3373943

Scale: Not to Scale

