

Appeal Decision

Site visit made on 13 August 2026

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 20th August 2026

Appeal ref: APP/P4605/X/25/3374627
49 Este Road, Birmingham B26 2ET

- The appeal is made by under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by Birmingham City Council to grant a certificate of lawful use or development.
- The application for a certificate of lawfulness was made by Mr Gary Poulton.
- The Application for a Certificate of Lawful Development, (LDC), was for: the existing use as a Class C4 House in Multiple Occupation at 49 Este Road, Birmingham B26 2ET.
- The application dated 13 September 2024, Council ref: 2024/05975/PA, was refused by a notice dated 14 August 2025.

Summary of decision: The appeal fails. A Certificate of Lawfulness is not issued.

Appeal property

1. The appeal property, No. 49 Este Road, is a 2 storey end of terrace house at the corner of the junction of Este Road and Hengham Road, Birmingham.

Application

2. The Appellant Mr Gary Poulton applied to Birmingham City Council for a Certificate of Lawful Development for: the existing use of the property at No. 49 Este Road, Birmingham as a Class C4 House in Multiple Occupation, (HMO).
3. Mr Poulton said the HMO use by 4 persons of No. 49 commenced prior to the introduction of the city-wide Article 4 Direction, which came into force on 8 June 2020, and had so continued since. The use of the property as a C4 house was therefore lawful.

Application decision

4. The Council's reason to refuse to issue a certificate of lawfulness said it had not been shown, on the balance of probability, that the evidence submitted in relation to No. 49 Este Road was sufficiently precise or unambiguous to demonstrate, on the balance of probabilities, that the property had been in use as a small HMO, (Use Class C4), prior to the introduction of the restrictive city-wide Article 4 Direction on 8 June 2020, or that an HMO use had continued without material interruption since then.

Selected legislation

5. Section 191(1) of the Act provides for the making of an application to ascertain whether, (a) any existing use of buildings or other land is lawful. In an LDC appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities. Issues of planning merit are not relevant; there is no deemed planning application.

6. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010, (the Order), came into force on 6 April 2010. The amended Order introduced a new Use Class, (houses in multiple occupation, Use Class C4) - Article 2(4). It covered use of a dwellinghouse as a house in multiple occupation as defined in s.254 of the Housing Act 2004. A dwelling that falls within Use Class C4 is a small shared house occupied by between 3 and 6 unrelated individuals as their only or main residence, who share basic amenities such as a kitchen or bathroom. Order amendment No. 2, SI 2010/2134 meant that from 1 October 2010 a change of use from a dwelling (C3) use to use as a House in Multiple Occupation (HMO) (C4) does not require planning permission.
7. The city-wide Birmingham City Council Article 4 Direction came into force on 8 June 2020. The Direction removed the permitted development right for conversion from a Use Class C3 dwellinghouse to a Use Class C4 small HMO.

Appellant – Mr Gary Poulton

8. Mr Poulton said the property at No. 49 Este Road had been used as an HMO for some time prior to introduction of the Article 4 Direction 8 June 2020. The previous landlord at that time was Thomas Mear. He had built and operated No. 49 Este Road as an HMO. Mr Poulton took on a lease with Mr Mear with a company let - Millpot Lettings Limited. That was in place from 1 January 2023. Mr Poulton purchased the property from Mr Mear as a 'going concern' on 22 December 2023.
9. Mr Poulton's supporting statement dated 13 September 2024 showed Thomas Mear as the previous landlord. It said 4 tenants; Mr Jamie Johnson, Mr Robert Mountford, Mr Mark Hobrow, and Mr Mathew Leonard began their tenancies in early 2020, prior to the Article 4 Direction coming into force. Copies of the tenancy agreements were submitted as evidence.
10. Mr Poulton fairly accepted that the evidence submitted, including bank statements covering the period from 2 February 2023 to 2 February 2025 was not wholly complete. But he asserted that, on balance, it was sufficient to show that the property had been in use as an HMO prior to the Article 4 direction being made. The HMO use had continued since. It was rare that records in such cases were perfect, particularly when relying on numerous people over several years. No license application was made for the property as it was believed that a license was only required for more than 4 tenants. When all evidence submitted was taken as "the whole", it was submitted that, on the balance of probability, a certificate of lawfulness could be issued.

Birmingham City Council

11. The Council said that to establish lawfulness, Mr Poulton needed to demonstrate that the property at No. 49 Este Road was in use as a Class C4 HMO on or before 8 June 2020 and that such use had continued without material interruption. The evidence had to clearly and consistently show the property was occupied by unrelated individuals sharing facilities prior to 8 June 2020 and that such arrangements had remained in place. Any inconsistencies, gaps in evidence, or contradictions had to be weighed in determining whether the use was lawful.
12. Mr Poulton's supporting statement dated 13 September 2024 identified Thomas Mear as the previous landlord. Four tenants; Mr Jamie Johnson, Mr Robert Mountford, Mr Mark Hobrow, and Mr Mathew Leonard purported to show they began their tenancies in early 2020, prior to the Article 4 Direction coming into force. When further evidence was requested to corroborate the tenancies, bank statements were provided covering the period from 2 February 2023 to 2 February 2025. But the bank statements did not cover the relevant period prior to the Article 4 Direction being made and did not align with the dates of the tenancy agreements provided. Instead, they related to the period during which the current owner leased the property from Mr Mear, beginning 1 January 2023. The bank statements were accompanied by a document listing tenants from January 2023

to February 2025. Those names differed from those shown in the 2020 tenancy agreements. Although the listed individuals appeared to have made regular payments, the evidence did not predate the Article 4 Direction and was inconsistent with earlier claims. A statutory declaration had been submitted. But it was provided by the current owner, who had no first-hand knowledge of the property's use prior to 1 January 2023. The declaration was based on the owner's "understanding," rather than direct experience. The Council concluded that the evidence submitted in relation to 49 Este Road was insufficiently precise or unambiguous to demonstrate, on the balance of probabilities, that the property had an ongoing lawful use as a small HMO.

Inspector

13. In my view, the Appellant's evidence before me backing the assertion that No. 49 Este Road was in use as a Class C4 HMO on or before 8 June 2020 was inadequate. It was insufficiently complete. The brief details of the assured tenancy agreements of Jamie Johnson, Robert Mountford, Mark Hobrow and Mathew Leonard were supportive, but were not of the weight, for example, of Statutory Declarations to that effect. On the evidence before me, I am unable to conclude, on the balance of probabilities, that use of No. 49 Este Road as a C4 HMO was shown to have started before 8 June 2020, the date of the making of the Article 4 direction restrictions.
14. Whilst Government advice is that in the case of applications for an existing use, 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. However, that is provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability; Para: 006 Reference ID: 17c-006-20140306. That necessary level of precision, unambiguity and comprehensiveness was not provided in the present case.
15. Had Mr Poulton's evidence of an HMO use been sufficiently persuasive of a start of the use of No. 49 before 8 June 2020, it could have shown the change of use of the dwelling at No. 49 had been the start of a lawful change to a C4 HMO use before that date. In that instance, the need to demonstrate the persistence and continuity of the C4 use up to the date for the purposes of the LDC application would not have been as onerous as that needed to support an ongoing unlawful use. That is, as the HMO use would have been lawful by 8 June 2020, it would not have been necessary that the property be occupied since that date without any significant breaks for that lawful use to be retained. In the case of an ongoing lawful use, unless it can be shown that the lawful HMO use could have been lost by being superseded by a reversion to a lawful C3 use, that lawful HMO use would have endured, *Panton & Farmer v SSETR & Vale Horse DC* [1999] JPL 461, also s.57(4) of the Act. No evidence to show a reversion to a C3 dwelling use was produced.

FORMAL DECISION

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development on the application made for the existing use as a House in Multiple Occupation for 4 persons (Use Class C4) under section 191(1)(a) of the Act in respect of the property at No. 49 Este Road, Birmingham B26 2ET was well founded and that the appeal should not succeed. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

John Whalley

INSPECTOR