



Appeal Decision

No Site Visit

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2026

Appeal Ref: APP/Z4310/X/25/3375109

9 Halkyn Avenue, Liverpool L17 2AH

- 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 Christopher Brannan against the decision of Liverpool City Council.
 - The application ref 25LE/1194, dated 29 April 2025, was refused by notice dated 13 October 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 dwellinghouse in multiple-occupation (by not more than six residents) within Use Class C4 of Schedule 1 to the Town and Country Planning Use Classes Order 1987 (as amended).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Both parties have confirmed that the appeal can be determined without the need for a site visit and I am satisfied that a site visit is not necessary to enable me to determine the appeal.
3. 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.
4. 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.
5. 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

6. The main issue is whether the Council's refusal to grant a lawful development certificate (LDC) is well-founded. This will turn on whether the use of the premises would have been lawful when it was begun and lawful use rights have not subsequently been lost, or if it was not lawful when it was begun, whether by the date of the LDC application, it was immune from enforcement action by virtue of the passage of time.

Reasons

7. 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.
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 an 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 accepted¹.
9. The main thrust of the appellant's case is that the change of use to a C4 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.
10. The Council refused the application on the basis that the evidence submitted does not adequately and irrefutably demonstrate that the premises have been used as a 3-6 bed HMO continuously prior and after 17th June 2021 when the Article 4 Direction came into force, till the date of the application. The use of the term 'irrefutably' raises a question in my mind as to whether the Council has applied the civil standard.
11. The Council also appears to be seeking demonstration that the use occurred continuously after the Article 4 Direction came into force. Given its reasons for refusing the application, it seems that the Council is conflating the need to show that a use has become lawful through the passage of time with the need to demonstrate that lawful use rights have not been lost. Nonetheless, my consideration in this appeal is whether the Council's decision, not the reasons for the decision, is well-founded.

¹ *Gabbittas v SSE & Newham BC* [1985] JPL 630 and *Ravensdale Ltd v SSCLG* cited

12. The appellant states that the appeal property is leased and managed by New Start Ltd, which is a family run, not for profit organisation which works in partnership with YMCA Together, a Registered Social Landlord (RSL). There is no suggestion that the appellant company is an RSL or would not meet the definition of a C4 HMO on that basis. In support of their case, I have been provided with a statutory declaration made by the Company Secretary of New Start Ltd. The individual states that the property has continuously been used as a dwellinghouse in multiple occupation by up to six residents since 1 December 2008.
13. Given the appellant's case is that the use was begun in 2008, it is necessary to consider the legislative position at that time and the implications, if any, for the lawfulness of the use. The Town and Country Planning (General Permitted Development)(England) Order 1995 was amended by the Town and Country Planning (General Permitted Development)(Amendment)(England)(No.2) Order 2010 to give permitted development rights for buildings used as dwellinghouses, to use as small scale houses in multiple occupation shared by three to six people without the need for a specific planning application.
14. This means that a material change of use from a Class C3 use to a Class C4 use would have been permitted development had it occurred after the amendment came into force on 1 October 2010, except where such permitted development rights are removed by virtue of an Article 4 Direction. Prior to 2010, Class C3 included use as a dwellinghouse (whether or not as a sole or main residence) (a) by a single person or by people living together as a family, or (b) by not more than 6 residents living together as a single household (including a household where care is provided for residents). Following amendment to the UCO², a use within Class C4 is excluded from the definition of C3.
15. The appellant suggests that, as there was no differentiation in the UCO between C3 and C4 dwellinghouses until April 2010, it is clear that the use of No. 9 Halkyn Avenue as a small house in multiple occupation did not require planning permission from the outset. Had the use been lawful at this time and those use rights not subsequently been lost, for example by abandonment or material change of use, then its use would have remained lawful, regardless of any subsequent changes to the UCO and/or GPDO.
16. Before the changes to the UCO in 2010, whether the use of the property was development would have required consideration of two questions: Firstly, whether the use fell within Class C3 and, if not, whether occupation of the premises by up to six unrelated individuals would have been materially different to the previous use as a C3 dwellinghouse. Whether the use of the property would have fallen within class C3 at that time is not a straightforward question, as consideration would be needed as to whether the premises was occupied by not more than 6 residents **living together as a single household**.
17. Although the Company Secretary explains that the property has continuously been used as a dwellinghouse in multiple occupation by up to six residents since 1 December 2008, this does not tell me how those residents occupied the property or the nature of the relationship between the residents, for example. While the individual states that they understand that this use falls under 'Planning Use Class C4', Class C4 had not been introduced at that time.

² The Town and Country Planning (Use Classes)(Amendment)(England) Order 2010

18. There is very little information as to how the property was actually used prior to the changes to the UCO in 2010, such that it is not possible for me to conclude that the occupants were living together as a single household. Given the paucity of evidence regarding occupation at that time, it is also not possible for me to conclude that the use of the premises, when it began in 2008, was not materially different to the previous use. Consequently, it has not been shown, on the balance of probabilities, that when the use was begun, it was within Class C3 or would not have been materially different to the previous use.
19. Had the use been unlawful at that time, the introduction of permitted development rights in 2010 would not have made it lawful, since permitted development rights granted by the GPDO are not retrospective. Were that the case, in order to become immune from enforcement action, the use would need to have continued without significant interruption for a period of at least 10 years.
20. The appellant has provided various licence agreements, which are intended to show that the property has been used by multiple occupants before the Article 4 Direction was introduced in 2021 and thereafter. The agreements are dated between 2018 and 2025 and so, while they support the appellant's contention that the premises has been occupied by multiple occupants, and the veracity of those documents is confirmed by the Company Secretary in a Statutory Declaration, they do not show how the premises was used prior to 2018.
21. Given that the application was made on 29 April 2025, to show that the use of the property was immune by virtue of the passage of time, the appellant would need to show that the material change of use occurred on or before 29 April 2015 and continued without significant interruption thereafter.
22. The appellant has previously submitted an application, reference 24LE/3050, for a certificate of existing lawful development for a 7 bed House in Multiple Occupation (HMO)- Sui Generis. That application was recommended for refusal on the basis that the Council was not satisfied that the use was subsisting during the period of ten years ending with the date of the application. The Council report refers to a number of license agreements between 2017 and 2024 for between 1 and 6 occupiers. The report indicates that licence agreements dated 8 December 2017 (1 occupier) and 10 December 2018 (1 occupier) were provided in support of the application, suggesting the premises was occupied by one individual at that time.
23. Class C4 is intended to cover small shared dwellinghouses occupied by between three and six unrelated individuals who share basic amenities. A building occupied by fewer than three persons falls outside the definition of an HMO by virtue of Schedule 14 of the Housing Act 2004 (as amended). Occupation by one individual may have resulted in a material change of use from an HMO to a C3 use, depending upon the character of that use and appears at odds with the Company Secretary's suggestion that the property has been continuously used within Planning Use Class C4 since before 17 June 2021 to present.
24. The Council report also sets out that the application form states the use commenced on 7 July 2009. That date is inconsistent with the date given in the application form for this appeal, which was 1 December 2008. It is suggested that the previous application was submitted by the appellant, who is a layperson to planning. While this may be so, I would expect the application form to have been signed by the appellant confirming that, to the best of their knowledge, any facts

stated are true and accurate. I would also expect facts, such as the date when the use or activity was begun to be the same for the same use. It is not clear why in this appeal, the use is stated as having begun in 2008 but in the previous application it was stated as having begun in 2009, some 7 months later.

25. I am mindful that I do not have full details of the previous application before me. Nevertheless, the inconsistency between the details provided in respect of the two applications raises questions as to how the property has been used and when. Furthermore, while 2008 and 2009 are both well before the date of application reference 25LE/1194, had the property been used as a 7 person HMO, this may have resulted in a material change of use which without planning permission, would have been unlawful.
26. There is no evidence to show that an enforcement notice has been issued, and so the property would not have benefitted from the right of reversion under section 57(4) of the 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 (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.
27. Within the statutory declaration submitted by the Company Secretary, the individual states *'I can confirm that The Property has been visited by myself or other representatives of New Start Ltd three times per week since The Company commenced managing The Property on 1st December 2008 and have witnessed the use of the property by up to six unrelated individuals continuously and without material interruption for the duration of The Relevant Time Period'*.
28. Terms such as 'continuously' and 'material interruption' are not explained within their statutory declaration. They also use the term 'up to six residents', which could include occupation by one person. Furthermore, it is not clear from the Statement what the individual has actually witnessed or when, since they confirm the property was visited by 'myself or other representatives of New Start Ltd' (my emphasis).
29. Clearly if another representative visited the property and not the Company Secretary, it is difficult to see how the Company Secretary could have 'witnessed' the use of the property at that time. Although the statement suggests the premises has been visited regularly over the years, it is not clear whether the Company Secretary visited the appeal property themselves with any regularity. Their statement could mean, for example, they have visited it once, with all other visits carried out by other representatives of New Start Ltd.
30. Overall, I find their statement ambiguous and imprecise. This matters, because the appellant relies on this, together with the licence agreements, to show how the property has been used over time. Although licence agreements can show who was allowed to occupy the premises, they do not, of themselves, show that a named occupier did. An occupier who has a right (or is allowed) to occupy a premises may not do so for all sorts of reasons. They are not, therefore determinative of how a property has been used.
31. I have been provided with a number of HMO licences which allow no more than 7 persons to occupy the house. The issue of a licence does not mean that the property was (or had to be) occupied by 7 persons, it simply means that it could be occupied by up to 7 persons. Nevertheless, it is not clear why, if the premises has

only ever been used by up to six residents, the appellant has repeatedly sought a license for up to 7 persons.

32. The appellant suggests that HMO licenses are issued by the Council based upon the attributes of the property rather than evidence of previous or on-going use. However, the Notice of Proposal to Grant HMO Licence, dated 20 December 2018 (for example) states 'The HMO is suitable for occupation by the **number of people applied for** under the licence, this being 7 persons', suggesting the licence is based upon the number of people applied for, rather than the attributes of the property.
33. Of course, the appellant could have applied for 7 persons, without 7 persons ever having occupied the property at one time. Indeed, I note the licence agreements submitted in support of the previous application indicated between 1 and 6 occupants of the property. Nevertheless, this introduces ambiguity, particularly given the appellant's previous application for an LDC for a 7-bed HMO and given the limited information as to who occupied the premises prior to 2018.
34. This matters because if a material change of use to a 7 person HMO has occurred, there would have been no right of reversion to a C4 HMO. Permitted development rights in that case would be unlikely to apply because of Article 3(5) of the GPDO, which provides that the permission granted by Schedule 2 does not apply if, in the case of permission granted in connection with an existing use, that use is unlawful and the subsequent use of premises as a C4 HMO would not have been lawful.
35. It has not been shown that the use of the premises would have been lawful when it was begun or that lawful use rights have not subsequently been lost. Neither has it been shown that, if the use was not lawful when it began, that by the date of the LDC application, it was immune from enforcement action by virtue of the passage of time.
36. It has therefore not been demonstrated, on the balance of probabilities, that the use of the premises as a dwellinghouse in multiple-occupation (by not more than six residents) within Use Class C4 of Schedule 1 to the Town and Country Planning Use Classes Order 1987 (as amended) was lawful at the date of the LDC application. Consequently, the appeal must fail.

Conclusion

37. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a dwellinghouse in multiple-occupation (by not more than six residents) within Use Class C4 of Schedule 1 to the Town and Country Planning Use Classes Order 1987 (as amended) 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