

Appeal Decision

Site visit made on 17 September 2026

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 29th September 2026

APP/Z4310/X/25/3375913

112 Penny Lane, Liverpool L18 1DQ

- The appeal is made 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 Liverpool City Council to grant a certificate of lawful use or development.
- The appeal was made by My Student Home.
- The application was dated 30 December 2024 and validated on 8 May 2025 under Council reference 25LE/1218. It was refused by a notice issued on 25 June 2025.
- The Application for a Certificate of Existing Lawful Development, (LDC), for an 8 bed House of Multiple Occupation, (HMO), was made under section 191(1)(a) of the Act in respect of the property at No.112 Penny Lane, Liverpool L18 1DQ.

Summary of decision: The appeal is allowed and a certificate of lawful use is issued in the terms set out below in the Formal Decision.

Appeal property and application

1. The appeal property, No.112 Penny Lane, is a double fronted three storey dwelling near the south-western end of a short terrace of mixed residential and commercial uses fronting Penny Lane in the Wavertree area of Liverpool.
2. Submitted floor plans of No.112 show the narrowed ground floor having a front communal room, a separate kitchen to the middle of the building, a hallway and a utility room to the rear. On the wider first floor, 4 bedrooms, 2 small shower/w.c. rooms and a utility room are shown. Plans of the second floor show 4 bedrooms and a wide landing. There is a small yard at the rear of the property, accessed by an alleyway.
3. The application for a certificate of lawfulness asserts that the documents submitted with the application, a number of tenancy agreements, details of Council Tax payments and HMO licenses covering a 13-year period, showed the property had been used as an 8-bed Sui Generis large HMO since 1 July 2012 until the present day.

Background

4. S.191(1) of the Act provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; they may make an application for the purpose to the Local Planning Authority. Where that application is refused or deemed to have been refused and an appeal made, the burden of proof to show that the decision was not well founded lies with the appellant.
5. S.254 of the Housing Act 2004 sets out the meaning of “house in multiple occupation”. A house in multiple occupation has at least 3 tenants living in it, forming more than 1 household, sharing a toilet, bathroom or kitchen facilities with other tenants.

6. The Town and Country Planning (Use Classes) Order 1987 as amended puts land and buildings in England into various categories according to their type and purpose. They are known as 'Use Classes'. A 'Change of use' can occur within the same Use Class or from one Use Class to another. A sui generis use is not in a Use Class. It is, by definition, a use of its own kind.
7. A house in multiple occupation, (HMO), is where both of the following apply: at least 3 tenants live there, forming more than 1 household and toilet, bathroom or kitchen facilities are shared with other tenants. A large HMO is where both of the following apply: at least 5 tenants live there, forming more than 1 household and toilets, bathroom or kitchen facilities are shared with other tenants. The appeal property at No. 112 is clearly defined as a large HMO.
8. In support of their application for an LDC, the Applicants provided Assured Shorthold Tenancy Agreements, (ASTs), covering the requisite 10 year period from 2015 to 2025. The ASTs refer to 9 tenants in occupation in the first 3 years of that period, with 8 tenants in the remaining years thereafter. I understand that one of the bedrooms was occupied by a couple in the first 3 years from 2015.
9. The Council's reason for refusing to issue a certificate of lawfulness said: "The Local Planning Authority, based on the evidence provided to the Council, is not satisfied that the use was subsisting during the 10 year period prior to submission from the 1st of May 2015."

Considerations

10. The Applicants accepted that the submitted Assured Tenancy Agreements over the essential 10 year period showed the property at No.112 Penny Lane over occupied between July 2014 – June 2018. That is, by 9 occupants, not 8 as stated in the LDC application for the remaining 7 years of the 10 year period. However, they said that did not mean there had been a material change of use during that time. Occupancy was only one consideration for establishing use and an 8-bed HMO and a 9-bed HMO both fell within the same use class, Sui Generis – (of its own kind). The use remained as a Sui Generis Use Class HMO.
11. The Council said the application was for a change of use to an 8 bed HMO. A continuous use as an 8 bed HMO needed to be demonstrated for a period of 10 years. The evidence that it had been in use as a 9 bed HMO contradicted that claim. Therefore, the application could not be approved, even if the use class was the same. The descriptions of the uses were significantly different. The Council said that of the 10 years of ASTs, those for the first 3 years stated that 9 tenants were in occupation, the remainder showing occupation by 8 persons. Therefore, only a maximum of 7 years of occupation by 8 persons could be shown.
12. A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'. However, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and will be determined on the individual merits of a case – NPPF Para. 011 Reference ID: 13-011-20140306.
13. In my view, the change of the number of occupants of No. 112, that is the drop from 9 to 8 occupants after the first 3 years of the period under consideration, did not amount to a significant change, not one amounting to having been a material change of use of the property. The effect on the house and its immediate surroundings would likely have been minimal, scarcely discernible. How the level is particularised is for

the decision-maker and will depend on the evidence; it may be, for example, it could be the level at the start of the 10 year period, or the average or lowest level in that time. I consider it doubtful if it could be persuasively shown the level of change had caused a significant change in the resulting impact on the use of the land, the building or its surroundings. In my view, a change of occupancy of the dwelling at No.112 Penny Lane from 9 occupants to 8 would not have constituted a material change of use. The change of the description in the application of the level of the use alone was not, in this instance, important. The significance of the change of the number of occupants is only that the occupation of No. 112 Penny Lane over the requisite 10 year period had been by a minimum of 8 persons for the entire period.

14. The Council had also been concerned that the submitted HMO license copies did not cover the full 10 year period in question. Nor, they said, were the Applicants' sporadic series of Council Tax records complete. There were also gaps in details of deposit payments. No statutory declarations had been provided stating that the HMO has been in use for 10 full years as an HMO for 8 people. The Council concluded that the submitted evidence did not sufficiently demonstrate that the property had been lawfully used as an 8 bed HMO sui generis for a period of up to 10 years up to the date of the application. In this instance, they considered that the evidence provided did not meet the necessary criteria to show that lawfulness had been gained.
15. I agree that the Applicants' submitted evidence fell short of completeness in several areas. It appears there were deficiencies in the administrative requirements under the Housing Act that attach to the running of an HMO business. However, for the purposes of establishing the lawfulness of the use under the Planning Acts, the Applicants evidence of the continuous occupancy of the property as a large HMO by 8 persons throughout the 10 years shown by the complete list of assured shorthold agreements was sufficient. The Council's concern that the tenancy agreements did not provide assurance that the full occupation of the property was as implied by those agreements is noted. But no counter evidence was shown or made available. I conclude that the evidence provided did show that No.112 Penny Lane had been used continuously as a large HMO for occupation by 8 persons for a period of 10 years up to the date of the application for a certificate of lawfulness.

Conclusion

16. The appeal succeeds. A Certificate of Lawfulness is issued.

FORMAL DECISION

17. 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 an 8 bed House of Multiple Occupation, (HMO), made under section 191(1)(a) of the Act in respect of the property at No.112 Penny Lane, Liverpool L18 1DQ was not well founded and that the appeal should succeed. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

John Whalley

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 (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 8 May 2025 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, was lawful within the meaning of section 191(1)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The change of use of the property from a C3 dwelling use to use as an 8 bed House of Multiple Occupation, (HMO), was permitted by the use occurring for a period of 10 years.

John Whalley

INSPECTOR

Date: 29th September 2026

Reference: APP/Z4310/X/25/3375913

First Schedule

Use of the property as a large House of Multiple Occupation for 8 persons (Sui generis use)

Second Schedule

No.112 Penny Lane, Liverpool L18 1DQ

IMPORTANT NOTES OVERLEAF
NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule was lawful on the certified date and thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 191(6) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

