



## Appeal Decision

Site visit made on 17 September 2026

**by John Whalley**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> September 2026**

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**APP/Z4310/X/25/3375926**

**32 Lidderdale Road, Liverpool L15 3JG**

- 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 Stephen Colligan.
- The application was dated 15 July 2025 and validated on 19 August 2025 under Council reference 25LE/1895. It was refused by a notice issued on 19 September 2025.
- The Application for a Certificate of Existing Lawful Development for a House in Multiple Occupation for 3 – 6 residents, was made under section 191(1)(a) of the Act in respect of the property at No. 32 Lidderdale Road, Liverpool L15 3JG.

**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.**

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### Appeal property and application

1. The appeal property, No. 32 Lidderdale Road, Liverpool is a 2 storey terrace house in a row of similar bay window houses in the Dales HMO Designated Neighbourhood, a specific residential area within the Smithdown/Wavertree area subject to planning controls aimed at curbing the over-concentration of Houses in Multiple Occupation (HMOs).
2. The application by Mr Stephen Colligan for a Certificate of Existing Lawful Development, (LDC) for the existing use of the property at No. 32 Lidderdale Road, as an HMO for 3 – 6 residents was made under section 191(1)(a) of the Act. Mr Colligan claimed that the house at No. 32 had been let to student groups of between 3 and 6 tenants for the last 30 years. He produced a Statutory Declaration dated 14 November 2025 which said that from his personal knowledge of No. 32, the 6 bedroom house had been used as a small HMO for 28 years without reversion to a C3 dwelling use in that time.
3. The application plans of the ground floor of No. 32 show the property having a sitting room at the front of the house, a bedroom behind, a bathroom and what was described as an anti-room, (or anteroom), further to the rear, with a dining room and a separate kitchen at the end of the house. The plans for the first floor show 2 bedrooms at the front of the house, another bedroom, a bathroom and 2 more bedrooms at the back.

### 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. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 came into force on 6 April 2010. It 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.
6. However, a Liverpool City Council Article 4 Direction made under the General Permitted Development Order covering an area including the applicable Smithdown Ward came into force on 19 July 2018. The Direction removed permitted development rights for conversion from a Use Class C3 dwellinghouse in that area to a Use Class C4 small HMO.

### Considerations

7. Liverpool City Council said the Applicant Mr Stephen Colligan needed to show that No. 32 Lidderdale Road was in an HMO use before 17 June 2021 and that it had not reverted to a C3 family home use since the Article 4 Direction came into force, up until the date of the application for an LDC, that is, 15 July 2025.
8. I have some difficulty with Liverpool City Council's reason for refusing Mr Colligan's application. It says the Council was not satisfied that the change of use from class C3 dwelling house to a class C4 small HMO had operated for 4 continuous years without interruption and had not been in any other use since, up to the date of the application. The reason implies acceptance that a change of use of the dwelling at No. 32 to a class C4 HMO use had occurred, but that the Council wanted to see an uninterrupted continuous use as an HMO up to the date of the application.
9. The need here for the application of a 4 year period is unclear. If No. 32 had been in use as a small HMO after 1 October 2010 and was so used up to and beyond 19 July 2018, that is, before the Article 4 Direction came into effect, it would not have been necessary for the owner to subsequently show it had either been occupied continuously since that change of use or show that it had not reverted to a C3 dwelling use. Nor would it have been necessary to show a continuous use for 4 years subsequent to use as a small HMO. The HMO use would have become lawful before the Article 4 Direction came into effect and, unless the Council could show otherwise, that lawful use would have persisted.
10. The Council were correct to say that planning permission is not required for the change of use of a property from a Class C4 HMO to a Class C3 house. I agree that had the property reverted back to a Class C3 use, planning permission would have been required by the effect of the Article 4 Direction to change the use of the premises from Class C3 to Class C4 use. However, no evidence was brought to show such changes having been made. A local planning authority cannot anticipate a breach of planning control.
11. The Council pointed to a number of gaps in the supplied supporting information. The Applicant had been unable to provide comprehensive details of several aspects of the operation of an HMO business. For example, HMO licences were missing,

tenancy agreements piecemeal, student council tax exemptions lacking and full lists of student names were unavailable. They were of the view that more comprehensive details would have been needed to support a claim that an uninterrupted ongoing unlawful use had acquired lawfulness by the passage of time. However, where the evidence points to the start of a lawful small HMO use of No. 32 before October 2010, the burden of showing how and when that lawfulness might have been lost, shifts to the local planning authority. The failure or an inability to provide substantial information to demonstrate the ongoing lawful HMO use does not remove that lawfulness. Lawful use rights can only be lost by evidence of abandonment; by the formation of a new planning unit; or by being superseded by a further change of use. A use which was merely dormant or inactive could still be considered as 'existing', so long as it had already become lawful and not been extinguished in one of those 3 ways, (*Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461).

## **Conclusion**

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

## **FORMAL DECISION**

13. 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 3 - 6 persons (Use Class C4) under section 191(1)(a) of the Act in respect of the property at No. 32 Lidderdale Road, Liverpool L15 3JG 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



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# 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

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IT IS HEREBY CERTIFIED that on 15 July 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 a lawful C4 HMO use was permitted by The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010.

*John Whalley*

INSPECTOR

Date: 29<sup>th</sup> September 2026

Reference: APP/Z4310/X/25/3375926

## **First Schedule**

Use of the property as a House of Multiple Occupation for 3 - 6 persons, (Use Class C4)

## **Second Schedule**

No. 32 Lidderdale Road, Liverpool L15 3JG

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.

# Lawful Development Certificate Plan

Appeal reference: APP/Z4310/X/25/3375926

Date: 29<sup>th</sup> September 2026

No. 32 Lidderdale Road, Liverpool L15 3JG.



Plan attached to the Lawful Development Certificate - No scale

*John Whalley*

INSPECTOR