



Appeal Decision

Site visit made on 7 October 2026

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 15th October 2026

APP/Z4310/X/26/3377377

104 Kenmare Road, Liverpool L15 3HQ

- 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 Mrs Louise Moss.
- The application was dated 15 July 2025 and validated on 26 September 2025 under Council reference 25LE/2517. It was refused by a notice issued on 6 January 2026.
- The Application for a Certificate of Existing Lawful Development for a House in Multiple Occupation, (HMO), for 3 – 6 persons (Use Class C4), was made under section 191(1)(a) of the Act in respect of the property at No. 104 Kenmare Road, Liverpool L15 3HQ.

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. 104 Kenmare Road, Liverpool is a bay window 2 storey terrace house in a row of similar houses in the Wavertree Neighbourhood area of the City.
2. The application dated 15 July 2025 by Mrs Louise Moss for a Certificate of Existing Lawful Development, (LDC), for the use of the property at No. 104 Kenmare Road, as an HMO for 3 – 6 residents was made under section 191(1)(a) of the Act.
3. Liverpool City Council's reason to refuse to issue an LDC said: "*The evidence submitted does not adequately and irrefutably demonstrate that the premises have been used as a 3-6 person HMO prior to the introduction of the Article 4 Direction on 19th July 2018 or continuously as such up until the date of the application being made. As such the certificate is not capable of being issued.*"

Legal 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. Liverpool City Council implemented an Article 4 Direction in the Dales area of the Greenbank ward, including Kenmare Road, on 19 July 2018 to control the permitted development conversion of family homes into small HMOs. The Direction removed the permitted development rights for conversion from a Use Class C3 dwellinghouse to a Use Class C4 small HMO.

Considerations

7. The Applicant Mrs Moss said Liverpool City Council confirmed a student use of property between September 2014 to August 2024 by an email dated 13 August 2024 from the Council that confirmed the property: *'was exempt from Council Tax and occupied by students from 01/09/2014.'* She suggested use of No. 104 was as an HMO by students. It was reasonable to assume the City Council's Tax team would have carried out checks to ensure that the property was genuinely occupied by students and that the property was genuinely exempt from Council Tax payments.
8. The Council accepted that as part of the Article 4 process, any existing dwellings that were lawful HMOs prior to 19 July 2018 would not be caught by the Direction. The property could have between 3 and 6 persons residing there. The use as a C4 HMO would remain lawful provided the premises has not reverted back to a C3 dwellinghouse up to the date of application of 22 September 2025.
9. Although there was a full set of Assured Shorthold Tenancies, (ASTs) dating from July 2020 to 2026, they did not pre-date the Article 4 in 2018. The Applicant confirmed they had no tenancy agreement evidence further back, instead relying on an email from the City Council confirming that the property was student exempt and occupied by students from 2014. But the email did not confirm the number of students in occupation in that period.
10. The City Council's Private Sector Housing team confirmed that selective licences for up to 3 persons for the property had been in place from 8 November 2016 to 31 March 2020, and from 17 June 2024 to 16 June 2029. Again, however, the Council said the existence of a licence did not demonstrate occupancy.
11. In my view, there was adequate evidence to show, that on the balance of probabilities, the dwelling at No. 104 Kenmare Road had been in use as a house in multiple occupation by 19 July 2018. That was the date on which the Council's Article 4 direction withdrew permitted development rights for the change of use from its earlier single residential dwelling lawful use to use as a C4 small HMO for occupation by between 3 and 6 individuals. That the property was exempt from Council Tax and occupied by students from 1 September 2014, according to the Council's own records and so confirmed was good evidence of such use. There was no suggestion that this small house had been occupied by more than 6 individuals either before or since the date of coming into effect of the Article 4 direction. Also, there was no evidence of a reversion to use of No. 104 to a single family C3 use having occurred subsequent to 19 July 2018 which would have lost the C4 HMO use.
12. 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, 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. I consider that to be the case here.

13. The Applicant's evidence points to No. 104 Kenmare Road being in use as a small HMO before 19 July 2018 and that no superseding use or uses had occurred at the LDC application property before 15 July 2025.

Decision

14. 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. 104 Kenmare Road, Liverpool L15 3HQ 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 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

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First Schedule

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

Second Schedule

No. 104 Kenmare Road, Liverpool L15 3HQ

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

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No. 104 Kenmare Road, Liverpool L15 3HQ



Plan attached to the Lawful Development Certificate - No scale

John Whalley

INSPECTOR