Planning Inspectorate

Appeal Decision

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2026

Appeal Ref: APP/B2355/X/25/3376620
417 Market Street, Whitworth, Rochdale, Lancashire, OL12 8QL

- 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 (LDC).
- The appeal is made by Cooke Capital Estates Limited against the decision of Rossendale Borough Council.
- The application ref 2025/0391, dated 22 September 2025, was refused by notice dated 14 November 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 is sought is the use of the property as a 6-bedroom HMO (Use Class C4).

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use describing the existing use which is found to be lawful.

Preliminary and Procedural Matters

2. The appeal is made to ascertain whether the claimed use of the land was lawful as described in s191(2) of the Act on the date of the application. This provides that '…uses and operations are lawful at any time if - (a) no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force'. The relevant date was 22 September 2025.

3. Planning permission for the material change of use of a family dwellinghouse (Class C3 of the Use Classes Order[1]) to a small house in multiple occupation (HMO) (Class C4) for occupation by between 3-6 people is granted by Article 3(1) and the provisions and terms of Class L of Part 3, Schedule 2 of the Town and Country Planning (General Permitted development) (England) Order 2015 (as amended) (the GPDO).

4. However, on 19 September 2025, an Article 4 Direction came into effect. That Direction prevented the change of use from C3 to C4 dwellinghouses unless permission is granted for it on application. It is the appellant's case that the use of 417 Market Street as a C4 HMO commenced prior to the Article 4 Direction coming into effect such that the Class L provision applied.

5. The burden of proof in satisfying the requirement of s191(1) falls to the appellant to establish that the specified use commenced prior to the date of the Article 4 and was occurring on the relevant date. The appropriate standard for testing the

[1] Town and Country Planning (Use Classes) Order 1987 (as amended)

evidence is made on the balance of probabilities, that is to say whether something is more likely than not.

6. The Planning Practice Guidance[2] reflects prior Court judgments. It sets out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.

7. As part of the appeal the appellant submitted additional documents which were not before the Council when it considered and determined the application. The Encyclopaedia of Planning Law and Practice sets out that appeals under s195 of the Act 'are invariably treated as *de novo* appeals…the parties and interested persons may submit additional evidence to the Secretary of State which was not before the authority at the time of its decision'. Consequently, I have had regard to the additional documents in my determination of the appeal.

8. As a case concerned with the use of the property on a specific past date, no site visit was deemed necessary. I have determined the case on the evidence before me.

Main Issue

9. The main issue is whether the Council's decision to refuse the application for the LDC was well founded.

Reasons

10. The appellant's evidence refers to works which had been undertaken to convert the former family home at no.417 to an HMO to provide temporary living accommodation for between 3 and 6 unrelated people. The details of the site layout were provided on plans submitted to the Council with the LDC application. These show individual bedrooms and shared kitchen and living/dining areas. Notably, while two bedrooms include en-suite bathroom facilities, there is provision of four additional individual bathrooms on the basement level.

11. The appellant has provided a copy of the contract made between Tailored Contracts Ltd and Cooke & Co Developments. It specifies works to the property to convert its use to an HMO. An accompanying report provides details and timings of the electronic signatories to the agreement. The contract was dated 10 April 2025 and shown to be signed by both parties on that date.

12. By explicit reference, the contract details works directly relating to the use of the premises as a future HMO. It required that they meet applicable HMO regulations including electrical, alarm and kitchen space regulations, for example. Additional documents including a Gas Safety Certificate (issued 12 September 2025), Electrical Installation Certificate (8 September 2025), a Fire Risk Assessment (15 September 2025), a Legionella Risk Assessment (5 September 2025), and an energy rating assessment dated 18 September 2025, all allude to the preparation of the premises for use as an HMO.

[2] Paragraph: 006 Reference ID: 17c-006-20140306

13. The appellant's evidence also includes a lease agreement for no.417. This is between Cooke Capital Estates Ltd and Prosocia Housing Ltd, a provider of temporary housing accommodation. The deed is headed with the date 11 September 2025. The signatures to the lease are redacted and, although the signed terms indicate the deed would be effective from the headed date, there are no other dates shown alongside the obscured signatures. The signatories to that agreement were Olivia Ozery of Cooke Capital Estates witnessed by Liv Weedall, and an unnamed trustee of Prosocia Housing stated to be witnessed by Alice Tinsley.

14. However, a supporting redacted document entitled 'Prosocia Lease 417 Market Street History' in the same format as the build contract electronic signature inventory suggests that an attached document was created on 19 September 2025, was emailed to Prosocia for signing at 15:09hrs and was signed at 15:11hrs. It was then sent on to other parties for their electronic signatures, including Alice Tinsley (18:41hrs), Olivia Ozery (19:44hrs) and Liv Weedall (19:45). Taking the documents together, it suggests that the lease was not formally agreed until 19 September 2025 – the day on which the Article 4 restriction became effective.

15. In support of the appeal, the appellant has also provided copies of applications for back-dated housing benefit claims for Room 2 [Siab] and Room 6 [Beswick] from 18 September 2025 to December 2025. However, both claims for benefit were turned down. Additionally, a licence agreement between Dawson Housing Ltd and Jessica Nicholls is signed by Will Stroud (licensee) and Darrell Tinsley (licensor) is submitted. It related to Room 5 and is dated 18 September 2025.

16. Other licence agreements between Dawson Housing Ltd and Assim Siab are signed by Asim Siab (licensee) and Darrell Tinsley. They relate to Rooms 2 and 4. They are also dated 18 September 2025.

17. The above combined evidence of tenancies is unclear. The appellant has not explained how sub tenancies issued by Dawson Housing Ltd, which seemingly pre-date a sub-letting tenancy agreement between the owner and Prosocia, relate to each other. Moreover, there is little to demonstrate that the two licensees detailed on the licence agreements, or others, were in residence as a group of 3 or more by the 18 September 2025 such that occupation could be said to have actually begun on the ground.

18. The appellant's case in that respect is not assisted by Individual Support Logs. Those documents fail to provide any relevant names or details of locations where support was said to have taken place. Together with the other evidence relating to occupancy, I find them imprecise and ambiguous. On the balance of probability, the appellant has therefore failed to demonstrate that occupation by three or more individuals had occurred on the relevant date or prior to the Article 4 Direction coming into force.

19. However, 'occupation' is distinct from 'use'. It was held in *Impey*[3] that the making of a material change of use should have regard to two factors, neither of which is decisive:

[3] *Impey v SSE & The Lake District SPB* (1980) 47 P&CR 157 [1981] JPL 363

- the physical state of the premises with regard to viable facilities for living (per *Gravesham*[4]), and
- actual, attempted or intended use.

20. In *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15, Lord Mance held that 'too much stress… [has] been placed on the need for "actual use"…it is more appropriate to look at the matter in the round and to ask what use the building has or of what use it is.' It is therefore incorrect to regard the commencement of residential use as automatically giving rise to a change of use or, conversely, to conclude that there had not been a change of use because the building was not actively occupied as a dwellinghouse. Further, in *Jones v Isle of Anglesey CC* [2024] EWHC 2582 (Admin) it was held that physical works can implement a change of use and be consistent with the intention to commence that use in the absence of actual use.

21. According to third party evidence, works to the building were incomplete on 18 September 2025. A photograph of the living/diner room on that date shows it unfurnished with an internal door still packaged and unhung, and builder's equipment and materials taking up much of the floorspace. Another image shows larger construction items being worked and/or stored to the front of the premises. That evidence states that works were ongoing on 3 October 2025 after occupancy had occurred, with the first occupant having not been observed until 22 September 2025 after delivery of flat-packed furniture two days earlier. That evidence is said to be supported by CCTV videos. Although that evidence is not available to me to view, there is little basis to doubt its credibility.

22. The appellant acknowledges that some minor completion works intermittently took place after the relevant date and alongside tenants in occupation. Correspondence from the contract manager suggests the installation of a kitchen cupboard, replacement of some external cladding, painting of doors and site tidy were complete by 25 September 2025.

23. Notwithstanding, there is little dispute between the parties in the appeal that the building is a 'dwellinghouse', or that the works for the conversion for HMO use were nearing completion by the end of September/start of October 2025. This is supported by the evidence, particularly the various certifications.

24. Even if the building was not fully furnished on or until shortly after 19 September 2025, there is little to indicate that it did not have the character of a dwellinghouse for the intended C4 use or would not ordinarily afford the facilities required for day-to-day private domestic existence (the *Gravesham* tests). Moreover, given the build contract, the inclusion of the multiple separate basement bathrooms, the stage of completion of the works and the nature of the principal tenant's stated business, I find it more likely than not that, as a matter of fact and degree, the works contracted in April 2025 and carried out thereafter were, in themselves, distinctly for the purpose of an HMO use and resulted in the material change of use of the site prior to the effective date of the Article 4 Direction as they were probably largely complete save for minor finishing works.

25. Accordingly, as development consisting of a material change of use from Class C3 to Class C4, it benefitted from planning permission granted by virtue of Article 3(1)

[4] *Gravesham BC v SSE & O'Brien* [1983] JPL 306

and Class L of Part 3, Schedule 2 of the GPDO prior to the effect of the Article 4 Direction and was therefore lawful on 18 September 2025 and the relevant date.

Conclusion

26. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use for use of the property as a 6 bedroom HMO (Use Class C4) is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

R Hitchcock

INSPECTOR

Planning Inspectorate

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 (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 22 September 2025 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The works for conversion of the C3 dwellinghouse to a C4 house in multiple occupation were substantially completed prior to an Article 4 Direction coming into force on 19 September 2025 such that the change of use of the building had occurred prior to that date. Accordingly, planning permission for the material change of use was granted by Article 3(1) and Class L, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) before the restriction became effective.

Signed

R Hitchcock

Inspector

Date: 19 November 2026
Reference: APP/B2355/X/25/3376620

First Schedule

Use of the property as a 6-bedroom HMO (Use Class C4)

Second Schedule

Land at 417 Market Street, Rochdale, OL12 8QL

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 19 November 2026

by R Hitchcock BSc DipCD MRTPI

Land at: 417 Market Street, Rochdale, OL12 8QL

Reference: APP/B2355/X/25/3376620

Scale: Not to Scale

