

Appeal Decision

Site visit made on 12 March 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 20th March 2025

APP/Z4310/X/24/3350933

67 Garmoyle Road, Liverpool L15 3JH

- 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 the refusal by Liverpool City Council to grant a certificate of lawful use or development.
- The appeal was made by Your Place Ltd.
- The application, reference 24/LE/0055, was dated 10 January 2024. It was refused by a notice dated 1 March 2024.
- The Application was for a certificate of Existing Lawful Development for an 8 bed house in multiple occupation (HMO) – *Sui Generis*.

Summary of decision: The appeal is not allowed. A certificate of lawful use or development is not issued.

Appeal property and application

1. The appeal property, No. 67 Garmoyle Road is a mid-terrace house in a residential road of similar properties.
2. The application for a certificate of lawfulness, (LDC), was made by Mrs Kim McGilley, managing Agent for Your Place Ltd, dated 10 January 2024. The application claimed that use of the property at No. 67 as an 8 person house in multiple occupation (HMO) started on 1 July 2009.

8 person HMO

3. Usually, an HMO is a house or a flat in which two or more households live as their main or only residence and where some of those households share basic facilities, such as a kitchen, toilet or bathroom. In this case, the application is for an LDC for an 8 person HMO. That falls outside Use Class 4, (small HMO 3 - 6 bedrooms), Article 3 – Use Classes – of the Town and Country Planning (Use Classes) Order 1987 (as amended). An HMO for more than 6 persons is considered a '*sui generis*', (of its own kind), use for which conversion from a Use Class C3 single household dwellinghouse requires planning permission.

Considerations

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 and an appeal against that decision is made, the burden of proof to show that the decision was not well founded lies with the appellants.

5. The purpose of the LDC provisions is to enable the making of an objective decision based on the best facts and evidence available when the decision is taken. Evidence should not be rejected simply because it is uncorroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted, (*Gabbitas v SSE & Newham BC* [1985] JPL 630, also *Ravensdale Ltd v SSCLG*, and *Para 006 NPPF - Planning practice guidance*).
6. In her Statutory Declaration, Mrs McGilley for Your Place Ltd said that No. 67 Garmoyle Road had been continuously used by 8 people as an 8 Bed HMO property since 1 July 2013. Mrs McGilley had fully managed Your Place Student Lettings for 12 years. She had visited the property numerous times over the years for inspections and viewings. The property had always been in use as an 8 Bed HMO.
7. No details of an HMO use before the Tenancy Agreement start date 1 July 2015 was provided, although Mrs McGilley's statutory declaration said No. 67 had been an 8 person HMO since 1 July 2013. A considerable number of documents, including lists of rent payments, HMO licence and student council tax exemptions were submitted. Those details showed that the property at No. 67 had been let and occupied for some years. But a demonstration of a continuous use and uninterrupted occupation by 8 persons as an 8 bedroom HMO for the requisite period of 10 years from 10 January 2014 to the date of the application for an LDC was not shown.
8. As the Council pointed out, no Assured Shorthold Tenancy Agreements for the 10 year period 10 January 2014 to 10 January 2024 were supplied. That made it difficult to provide evidence of a continuous occupancy by 8 persons for the full 10 year period such that the Council could have taken enforcement action at any time in the relevant period, (*Thurrock BC v SSETR & Holding* (COA 27.2.02, J 1080). The question remains as to whether the use was continuous, not whether the property was fitted out or intended for occupation by 8 persons, (*Islington LBC v SSHCLG & Maxwell Estates* [2019] EWHC 2691 (Admin)). For much of the requisite 10 year period, it appears that the dwelling at No. 67 Garmoyle Road had been let to students. Some may have lived at No. 67 as their only residence. Most, I expect, would have lived elsewhere outside term time. I consider it unlikely that at all times, there would have been 8 students living at No. 67. It was not shown otherwise. If an unlawful 8 person HMO use had started on or before 10 January 2014 and had ceased during the relevant period by there not being 8 persons living at No. 67, the time up to that point would not count towards immunity. The "clock" would restart when the unlawful 8 person HMO use recommenced.
9. Council Tax records for 7 years from 2017 to 2024 and an HMO licence showing an 8 person occupancy for 5 years from 11 February 2019 to 10 February 2024 in part supported the Appellants' case. But that, and other details submitted, in my view, failed the test of the need to show sufficient evidence that the premises had been continuously and uninterruptedly occupied as an 8 bed HMO for a period of 10 years from 10 January 2014.

Inspector conclusions

10. A continuous use and uninterrupted occupation of No. 67 Garmoyle Road as an 8 bedroom HMO for the requisite period of 10 years from 10 January 2014 to the date of the application for an LDC was not shown, that on the balance of probabilities, when the application was made, the use had become lawful. A certificate of lawfulness is not issued.

11. NPPG requires evidence to be precise and unambiguous; in this instance it is considered that the evidence provided does not meet these criteria and that it has not been adequately demonstrated that the premises has been continuously occupied as an 8 bed HMO for a period of 10 years from 10 January 2014.

FORMAL DECISION

12. For the reasons given above, I conclude that the Council's refusal to grant a lawful development certificate for the use of No. 67 Garmoyle Road, Liverpool L15 3JH as an 8 bed house in multiple occupation (HMO) – Sui Generis was well founded and that the appeal should fail. I exercise accordingly the powers transferred to me by s.195(3) of the Act.

John Whalley

INSPECTOR