



Appeal Decisions

Site visit made on 16 September 2025

by **M Ollerenshaw BSc(Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th September 2025

Appeal A Ref: APP/A2335/C/24/3354080

Appeal B Ref: APP/A2335/C/24/3354081

28 Dallas Road, Lancaster, Lancashire, LA1 1TW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr Imtiyaz Desai (Appeal A) and Ms Rizwana Bapu (Appeal B) against an enforcement notice issued by Lancaster City Council.
- The notice was issued on 19 September 2024.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised use of the Land as a large house in multiple occupation (use class, sui generis) containing up to 7 occupants.
- The requirements of the notice are: To cease the use of the Land as a large house in multiple occupation (use class 'sui generis') and return the Land to its lawful use as a single dwellinghouse (use class 'C3').
- The period for compliance with the requirements is 12 weeks.
- Appeal A is made on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is made on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990.

Summary of Decision: Appeal A is allowed, the enforcement notice is quashed following a correction, and planning permission is granted in the terms set out below in the Formal Decision. Appeal B does not fall to be considered.

Preliminary Matters

1. The enforcement notice relates to the material change of use of the property to a large house in multiple occupation (HMO) (sui generis use). The allegation should therefore have stated "material change of use", as this is the act of development as defined by statute. This can be corrected without injustice to the parties.
2. I have determined the appeals having regard to the revised National Planning Policy Framework published in December 2024.

Appeal A on ground (a) and the deemed planning application

3. An appeal on ground (a) is that planning permission ought to be granted for what is alleged in the notice.
4. The allegation in the notice, as corrected, is the material change of use to a large HMO for up to seven occupants. Planning permission was refused for this development in 2021¹. The two reasons for refusal broadly correspond to the reasons for issuing the notice and relate to an overconcentration of HMOs in the local area and sub-standard living conditions for the occupiers respectively.

¹ Council Ref. 21/00966/CU

5. Therefore, the main issues are the effect of the development on the housing mix in the local area, and whether the standard of accommodation is satisfactory.

Reasons

6. The appeal building is a large, mid-terraced property located within a predominantly residential area. It provides accommodation over four levels including in the basement and the roof space. The property is set back from Dallas Road behind a small front garden with a large outrigger and a private yard to the rear. Although the property was vacant at the time of my site visit, it has been occupied and is laid out as a seven bedroom, seven person HMO. The site is covered by an Article 4 Direction which seeks to control the proliferation of HMOs in Lancaster.
7. Policy DM13 of the Development Management Development Plan Document (climate emergency review) 2025 (DMDPD) refers to the importance of maintaining an appropriate housing mix and safeguarding the character of residential areas. To this end, it sets out a general presumption against HMOs, and states that proposals which would lead to a concentration of more than 10% of the total housing stock being classed as HMOs within a 100 metre radius will not be considered acceptable. The Council's 'Residential Conversions and Houses in Multiple Occupation Supplementary Planning Document' (SPD) explains that schemes will be refused where a community is already imbalanced, or where granting planning permission would create an imbalance.
8. The notice states that the percentage of HMOs within a 100m radius of the site equates to 26.79% of the total number of properties. The updated figure provided by the Council indicates that 29.73% of properties within 100m of the site are HMOs, a rise since the notice was issued. The Council considers these figures could be an under representation of the actual number of HMOs as some small HMOs with less than 5 occupants may not be recorded. Either way, these figures, which have not been disputed by the appellants, show that the number of HMOs within a 100m radius of the site already exceeds the 10% threshold set out in Policy DM13. The appeal development adds to that number. It therefore conflicts with Policy DM13 and the SPD. However, the Council has not explained why this breach results in demonstrable harm to the character of the area in this instance.
9. Policy DM13 states that proposals for HMOs may on exception be considered acceptable subject to the criteria numbered V to IX. These relate to consideration of noise and disturbance; refuse, recycling and bicycle storage; the character of the building and the area; car parking; and occupiers' living conditions. The Council says that the exceptional circumstances do not apply in this case given the current density of HMOs. However, Policy DM13 does not specifically preclude consideration of the exceptional circumstances on the basis that the density of HMOs has reached a certain level.
10. The SPD sets out exceptional circumstances which may include where the concentration of HMOs within the 100m radius is such that the retention of remaining buildings will have little effect on the balance and mix of households. In these instances, marketing for a period of at least 6 months at a reasonable dwellinghouse value will be required. There is no indication that a marketing exercise has been undertaken in this case. However, the Council does not appear to be arguing that the concentration of HMOs in this area has reached a point

where the retention of remaining buildings will have little effect on the balance and mix of households.

11. The use of the property as a seven person HMO results in a more intensive use than would be expected with a traditional family dwelling. However, there is no substantive evidence before me to suggest that this HMO has caused adverse effects in relation to noise and disturbance. Nor have I been made aware of any noise complaints from neighbouring residents despite the property having been used as a HMO since around 2019. Moreover, unacceptable levels of noise and disturbance are not the inevitable consequence of HMOs, but rather a matter of individual behaviour and appropriate management, and this HMO appears to be a well managed one.
12. The rear yard provides sufficient space for refuse and recycling storage. Cycle storage could also take place in the rear yard or alternatively in the basement.
13. There are no external alterations to the property as part of the change of use and no discernible difference between its appearance and that of others on Dallas Road. Therefore, the use of the appeal property as a HMO does not harm the character of the building or the surrounding area in my view.
14. Given the site's proximity to the city centre and public transport links, it is unlikely that the occupiers would need or possess motor vehicles as walking and cycling are realistic options. The Council has not identified any harm in respect of on-street parking stress on Dallas Road, and I have no reason to find otherwise.
15. Exception IX requires that proposals do not result in the creation of sub-standard living conditions. The Council identifies concerns regarding the layout of the property, in particular the living room, kitchen and bathroom facilities, and the second floor bedrooms. I note that the property benefits from a HMO licence issued by the Council's Environmental Health Service, and is accredited through Lancaster University Homes, a university letting agency.
16. The communal facilities consist of a dining room and a separate kitchen at ground floor level, a lounge, utility room and bathroom within the basement, and a shower room and toilet facilities at first floor level. The guidance in the SPD sets out that kitchens must not serve more than six residents, and living rooms should be designed to accommodate no more than six people. Whilst the kitchen, dining room and lounge serve seven residents, in my view these rooms and the circulation spaces are reasonably sized for the intended number of occupiers. The lounge within the basement is a large room which benefits from some natural light and outlook to the road from that part of the front bay window at pavement level. The bathroom in the basement is not served by a window but it is still a useable space and is supplemented by the shower room and toilet facilities at first floor level. Although the living spaces serve more than six residents, this is compensated for by the generous bedroom sizes. Therefore, the communal spaces are acceptable, despite a minor conflict with the SPD.
17. There are seven bedrooms: two on the ground floor, three on the first floor and two in the roof space. The bedrooms are generally of a good size and meet the SPD standard for minimum floor area of 9m² for bedrooms without an en-suite. Each is served by a window or rooflights to provide natural light and outlook. The useable floor area of the two bedrooms within the roof space is more limited due to the roof slope, but they do have sufficient space to accommodate a bed, desk, wardrobe

and some circulation space, and are not unduly cramped. Roof lights serve these bedrooms providing good levels of natural light and an adequate outlook towards the sky. Given the good standard of accommodation overall, the second floor bedrooms are acceptable.

18. For the above reasons, I conclude that whilst the development increases the proportion of HMOs within a 100m radius of the site, which already exceeds 10% of the total number of houses, and therefore does not comply with all aspects of Policy DM13 of the DMDPD and the SPD, it satisfies the exceptions to the policy, including the provision of a good standard of accommodation for the occupiers and it does not harm the residential character of the area. Therefore, in this particular case, I am not persuaded that the small contribution the development makes to the number of HMOs in the area has any materially harmful effects.

Other Matters

19. The appeal building is located in Lancaster Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area. As no external alterations to the building have been undertaken and none are proposed, the character and appearance of the Conservation Area is preserved.

Conclusion

20. For the reasons given, I conclude that the development contributes towards an existing concentration of more than 10% of houses within a 100m radius of the site being classed as HMOs. It does not, therefore, fully comply with Policy DM13 of the DMDPD and the SPD. However, in the particular circumstances of this case, there is no demonstrable harm to the residential character of the area and the development satisfies the exceptions outlined in Policy DM13, including the provision of a good standard of accommodation for the occupiers.
21. Therefore, Appeal A succeeds on ground (a) and I will grant planning permission for the development in accordance with the application deemed to have been made under section 177(5) of the 1990 Act, as amended, which will now relate to the corrected allegation. Given this conclusion, Appeal A on ground (g) and Appeal B do not fall to be considered.

Conditions

22. The Council have not suggested that conditions are necessary to make the development acceptable in planning terms. I have however imposed a condition to limit the number of occupiers to seven. This is reasonable and necessary to maintain an appropriate standard of accommodation and protect the living conditions of nearby residents.

Formal Decision

23. It is directed that the enforcement notice be corrected by deleting the words 'without planning permission, the unauthorised use of the Land as a large house in multiple occupation (use class, sui generis) containing up to 7 occupants' and replacing them with 'without planning permission, the material change of use of the Land to a large house in multiple occupation (use class, sui generis) containing up to 7 occupants'.

24. Subject to that correction, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the material change of use of the Land to a large house in multiple occupation (use class, sui generis) containing up to 7 occupants at 28 Dallas Road, Lancaster, Lancashire, LA1 1TW as shown on the plan attached to the notice, and subject to the following condition:
- 1) The use of the building as a house in multiple occupation shall be limited to a maximum of 7 residents at any time.

M Ollerenshaw

INSPECTOR