Planning Inspectorate

Appeal Decision

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04th November 2025

Appeal Ref: APP/Z4310/X/25/3365753
28 Ullet Road, Princes Park, Liverpool L8 3SR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr James Holmes (HI Liverpool Ltd) against the decision of Liverpool City Council.
- The application ref 23LE/3051, dated 1 December 2023, was refused by notice dated 10 December 2024.
- The application was made under section [191(1)(a) of the Act.
- The use for which a certificate of lawful use is sought is Sui Generis - HMO for 20 people.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. It has not been necessary to carry out a site visit in this case, as the appeal involves consideration of relevant planning law and the facts, and I have been able to reach a decision based on the documentary evidence submitted.

Main Issue

3. The main issue is whether the Council's refusal to grant a LDC was well founded.

Reasons

4. S191(2) of the Act states that uses and operations are lawful at any time if, (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5. S191(4) of the Act, indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

6. The PPG[1] advises that, if a local planning authority has no evidence itself, or 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

[1] Planning Practice Guidance: Paragraph 006 Reference ID:17c-006-20140306, Revision date: 06 03 2014

applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

7. As set out in the LDC application form, the grounds being sought are that the use began more than 10 years before the date of the application. The Council's notice of refusal indicates that it is not satisfied the use was subsisting during the period of ten years ending with the date of the application.

8. For the appeal to succeed, the onus is on the appellant to demonstrate their case on the balance of probabilities, and it must be shown that the use in question commenced more than 10 years before the date of the LDC application, that being 1 December 2023, and that the use subsisted without interruption for 10 years thereafter. The assessment is therefore made on the specific facts and based upon the evidence before me. For the avoidance of doubt, planning merits in the case of a LDC are not relevant at any stage.

9. The appeal site comprises of a detached property on the south side of Ullet Road. The site is located within Princes Park Conservation Area (CA) and adjacent to the Lark Lane CA. The planning history of the site dates back from 1973, which relates to a change of use from a dwellinghouse to 6 flats. However there is nothing further in the history that directly relates to this LDC application for a House in Multiple Occupation (HMO) for 20 people.

10. The appellants evidence includes the application form which sets out that the use started on 18 November 2013 and they provided location/floor plans showing 10 bedrooms over 3 floors, and fire assessments from 2014 to 2017 to the Council. The appeal evidence is accompanied by a copy of HM Title register, issued on 16 May 2023. Further evidence includes copies of how the property was licensed and shows that licences were granted for various 12-month periods by Liverpool City Council.

11. These licences were granted based on maximum occupancy 'up to', and the first one came into force on 24 March 2014, which was granted for 11 people. In June 2015 it was granted for 11 people, May 2016 for 20 people, July 2017 for 10 people, June 2018 for 25 people, September 2020 for 20 people, April 2022 for 20 people, and June 2023 for 20 people.

12. Although, I acknowledge that licences were granted there is no precise evidence to show the actual or exact occupation of the property for 20 people continuously throughout the relevant date period. Furthermore, several of these years show that a licence was only granted for no more than 10 or 11 occupants and the first licence did not come into force until 24 March 2014. In my view, this makes the evidence ambiguous on when the use itself commenced, exact persons, or numbers of occupation of the property between any intervening period in 2013 and the 24 March 2014.

13. Furthermore, there was no evidence provided by the appellant of licences being granted for periods within the years 2019 and 2021. The Council's evidence '23-LE/3051' shows there were gaps in dates of licences being granted over the 10-year relevant period.

14. Moreover, the Council have drawn my attention to the signed statement of common ground by both the main parties which was originally submitted with the appeal. The Council acknowledges that they do not dispute that the number of occupants

declared in the appellants supporting evidence falls below or above 20 persons. However, the appellant did agree that that the HMO licences are for ‘up to’ and are various numbers of people permitted to occupy the premises.

15. A copy of a letter was provided, obtained under a freedom of information request by the appellant. This sets out that the owner has been liable for Council tax, which relates to HMO properties, since December 2013. There is no precise date on this letter other than the month of when it became liable. There were copies of several Council tax bills provided to the Council, dated for each of the years between 2014/2015 and 2024/2025. These did show that Council tax was liable for the property, which is not disputed, but the evidence would only seek to confirm that the property was liable for Council tax as an HMO.

16. Thus, the evidence does not show the precise occupation of the premises for 20 people or indeed confirmation of numbers of residents at the premises during those times. I do not consider they provide substantive evidence of a substantiating long-term HMO use, including the whole relevant time period as the appellant claims.

17. A letter from ‘*Serco’* was submitted with the application, this was unsigned and dated. However, the appellant has as part of the appeal has provided a revised version, being a statutory declaration which is dated 2 June 2025. This relates to 2 properties, one being the appeal site and another site in Liverpool. For the appeal site it sets out that Serco has been leasing the property since 18 March 2014 and that it has been used consistently and continuously to house asylum seekers and used as an HMO.

18. Nevertheless, whilst Serco may have been leasing the property as part of a wider contractual role in supporting the Home Office. The commencing date of 18 March 2014 was a period after the date the appellant claims the use commenced of 18 November 2013, and the continuous use period of 10 years preceding the date of the application, that being from 1 December 2013. This makes the appellants version of events in the evidence somewhat imprecise. Moreover, the appellants appeal form suggests that it was leased to Serco since at least 2013, which contradicts the date in the declaration.

19. The appellant in this case, has described the LDC for the use of the premises as a 20 person HMO, including as set out in the application form, supporting evidence provided in both the application and appeal. Accordingly, an application must relate to a specific use, and the PPG requires precision in the terms of any certificate and what is being applied for, it is vital and needs to be more than simply a title or label. This is particularly important for uses which do not fall within any use class, and where it is clear there has been or is an intensification of a use.

20. It is not open to the appellant to pose a general enquiry (*final comments*) that the LDC for the use to be for up to 20 persons. However, it does not preclude another application being submitted later, if more information can be produced. Nevertheless, what is clear is that planning permission would have been required for more than 6 occupiers, and the use in this case if it was above would fall outside of any use class (sui generis). Furthermore, the powers under s191(4) of the Act are discretionary on such matters, and the evidence is imprecise, ambiguous and not sufficient to provide any certainty of when the HMO use began.

21. Therefore, taking the whole of the evidence submitted by the appellant, I consider that while they are not inconsistent with their case, they somewhat do not assist in providing clear and convincing justification. They do not add with any certainty evidential weight due to the degree of inconsistency, ambiguity, and lack of precision that the use of the property as an HMO for 20 people began 10 years before the date of the LDC application and continued thereafter without interruption. Moreover, the evidence provided has significant gaps in the timelines, and I have not been presented with any evidence that the use of the premises was in fact occupied by individuals, and it continued with occupation over the relevant time period.

22. For these reasons, I find that the appellant has provided insufficient evidence to demonstrate on the balance of probability that the use as an HMO for 20 people was instituted on or before 1 December 2013, 10 years before the date of the application, and continued thereafter without significant interruption. It was therefore not too late for the Council to take enforcement action as set out in the time limits of s171B(3) of the Act when the application was made. The burden of proof that lies with the appellant has therefore not been discharged.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use for an HMO for 20 people is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

K A Taylor

INSPECTOR