

Appeal Decision

Site visit made on 14 November 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 19th November 2025

APP/Z4310/X/25/3360551

3 Alpass Road, Liverpool L17 7BB

- 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 Stephen Rice, McGovern Architectural Design.
- The application was dated 14 February 2024 and validated on 24 February 2024 under reference 24LE/0385. It was refused by a notice issued on 5 July 2024.
- The Application for a Certificate of Existing Lawful Development, (LDC), for a 14 Bed House in Multiple Occupation (HMO) – Sui Generis, was made under section 191(1)(a) of the Act in respect of the property at No. 3 Alpass Road, Liverpool L17 7BB.

Summary of decision: The appeal is dismissed.

Costs application

1. The Local Planning Authority, Liverpool City Council, made an application for an award of costs against the Appellant, Stephen Rice, McGovern Architectural Design. That application is considered in a separate decision.

Appeal property and application

2. The appeal property, No. 3 Alpass Road, is a large detached residential property in the St Michael's area of Liverpool. The property has accommodation on 4 floors. Application plans show the internal layout having 2 lounges, a kitchen/diner, a laundry room and a boiler room in the basement. 2 self-contained flats are shown to be on the ground floor. The floor plan shows 7 en-suite rooms on each of the 2 top floors of the building, (on the first and second floors).
3. The application is for a certificate of lawfulness, (LDC), in respect of the existing use of the basement and the first and second floors of No. 3 Alpass Road as a Sui Generis 14 Bed House in Multiple Occupation (HMO). The Applicant said such use had been continuous for more than 10 years to the date of the application for an LDC. The application excludes the 2 flats on the ground floor.

Background

4. S. 254 of the Housing Act 2004 defines a House in Multiple Occupation as a building or part of a building occupied in accordance with s.254(2), that is, having one or more units of living accommodation not consisting of a self-contained flat or flats, where the living accommodation is occupied by persons who do not form a single household and where the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying.
5. Government advice says that a home is a house in multiple occupation if at least 3 tenants live there, forming more than 1 household and where toilet, bathroom or

kitchen facilities are shared with other tenants. It describes a home as a large HMO if at least 5 tenants live there, forming more than 1 household and where toilet, bathroom or kitchen facilities are shared by other tenants.

6. S.191(1) of the Town and Country Planning Act 1990 as amended 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.
7. S.191(4) of the Act - 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.

Considerations

8. The Appellant, Stephen Rice, said he purchased the appeal property, No. 3 Alpass Road, from Athena Group in October 2013. It had been a residential care home. Athena renovated and converted the property to its present state as a large HMO. It provided 14 en-suite individual accommodation rooms on the first and second floors, with shared use lounges, a kitchen/diner, laundry room and boiler room in the basement for use by the occupiers of those 14 rooms. The conversion included the 2 long lease self-contained flats occupying the ground floor of No. 3. They were not part of the LDC application accommodation. Another flat in the former coach house in the grounds of No. 3 is also excluded from the current LDC application.
9. Mr Rice described the property as “... *a fully built and tenanted property that could continue to be tenanted accordingly.*”. The property was sold by Athena to him as a “turn-key” operation, a fully built and tenanted property he could immediately let out. Tenants were said to be going into occupation in December 2013. At the time of the purchase and afterwards, Mr Rice said the HMO was fully managed by Athena. He said that was the reason he had no paperwork to evidence that No. 3 was occupied at that time. Mr Rice’s Statutory Declaration did, however, include a tenancy schedule showing that all 14 rooms at No. 3 were occupied at times between 1 May 2014 and 31 May 2015. I note that the list shows the use of the requisite parts of No. 3 as an HMO, but does not show a continuous use of all 14 rooms throughout the May 2014 to May 2015 period.
10. In my view, the situation at No. 3 was further complicated by the later history of the management of the HMO. In September 2015 Athena changed its name and became Warehouse Lifestyle-living. In November 2016 Warehouse became House SL Ltd. Management of the property was taken over by Ann and Thomas Chambers. Both had been working as managers for Warehouse/Athena in the lettings and maintenance department. In December 2019 House SL Ltd. ceased trading. Mr Rice said he was working full-time and had no time to manage the property. He said that was why he had no paperwork or evidence of occupation, licenses etc in 2013, 2014.
11. Evidence of the use of No. 3 as an HMO was provided by Mr Rice in documents made available at the time of re-financing together with some copy tenancy agreements from that time – he had been able to locate 7 of the 14 tenancy agreements dated from 2014 into 2015 as shown in the summary prepared by the Management company. Mr Rice had been able to evidence management invoices from December

2016 to 2024 showing the rents received for the occupied rooms in the property. However, early invoices only show rents received via the management company and not rents that were paid directly to Mr Rice who had let rooms directly himself during this period. He had said occupancy rates had always been above 80%.

12. As to use, the evidence provided does show that the basement, first and second floors of No. 3 Alpass Road has been used as an HMO for most of the requisite 10 year period. But as to the lawfulness of that use, the number of occupants is needed to precisely describe the use and the continuity of that use. Government advice is that a home is a large HMO if at least 5 tenants live there, forming more than 1 household who share toilet, bathroom or kitchen facilities with other tenants. Mr Rice said No. 3 Alpass Road could clearly house 14 HMO tenants. He sought a lawful development certificate for a large HMO (*Sui Generis*). But the description of use as a "large HMO" is imprecise in terms of the materiality of the use and its effect on the property and immediate surroundings. The number of tenants occupying the property is a fundamental matter. In this instance, the application is that use of No. 3 Alpass Road as an HMO for 14 beds/tenants has become lawful due to the passage of time, rather than has simply become a lawful large HMO by the passage of time.
13. In my view, evidence of the continuous occupation of all 14 rooms throughout the 10 year period was not demonstrated. The need for such continuity of use was shown in the case of *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 that a use can only become lawful if it continues throughout the relevant immunity period, such that the LPA could have taken enforcement action at any time. A use may only be dormant if it has acquired lawfulness. Short breaks, in an ongoing unlawful use, for example of a few days between occupation by different tenants, or for repairs, might not amount to a continuity break. Mr Rice's assertion that occupancy had always been above 80% however, suggests a fair concession there were significant gaps in the continuity of the unlawful use of all 14 rooms.
14. Whilst I understand the difficulty in providing clear evidence of the continuous use and occupation of all 14 rooms at No. 3 over the requisite 10 year period to 14 February 2024, especially bearing in mind the management changes, I consider the Council were right to conclude the evidence provided was not precise, unambiguous or clear enough to show the lawfulness of the use of the property as a 14 bed/person HMO for a 10 continuous period of years to the date of the LDC application.

Conclusion

15. 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 14 Bed House in Multiple Occupation (HMO) – *Sui Generis* under section 191(1)(a) of the Act in respect of the property at No. 3 Alpass Road, Liverpool L17 7BB was well founded and that the appeal should not succeed. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

John Whalley

INSPECTOR