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## Appeal Decision

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 February 2026

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**Appeal Ref: APP/V1260/X/25/3359086**

**61 Gresham Road, Bournemouth BH9 1QS**

- 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 Fifth Avenue Ltd against the decision of Bournemouth Christchurch and Poole Council.
  - The application ref 7-2024-18783-D, dated 21 October 2024, was refused by notice dated 19 December 2024.
  - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
  - The use for which an LDC is sought is 7-bedroom HMO (*sui generis*).
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Determination of the appeal requires an assessment of documentary evidence. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.

### Reasons

3. The main issue is whether, on the basis of all evidence submitted, the Council's decision not to grant an LDC was well founded.
4. For the Council's decision not to have been well founded the existing use must have been immune from enforcement action on the date of the application. To have gained immunity, the use must have subsisted continuously, in accordance with section 171B(2)(a) of the Act, for the ten year period prior to that date. The onus of proof is on the Appellant whose evidence must be sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the claimed use of the property had gained immunity and that the Council's decision was not therefore well-founded.
5. 61 Gresham Road has two bedrooms and a lounge/kitchen/diner at ground floor level, four bedrooms, a shower room and a bathroom at first floor level, and an en-suite bedroom in an annex. The use of the property as a 7-bedroom HMO (*sui generis*) must have commenced, to now be immune from enforcement action, more than ten years before the date of the application, i.e. before 21 October 2014. The 7-bedroom HMO use must then have subsisted for the ten year period. So evidence of the use of the property early in the ten year period is crucial.
6. The property was purchased by the Appellant in March 2019 but they have submitted in evidence a Tenant Occupancy Chart for the period October 2014 to March 2019. The chart shows the names of occupants of the seven rooms and indicates the

periods of tenancies on a monthly basis. On this evidence occupancy of the property fell below 7 persons for only six months; principally because room 1 was unoccupied for a six month period. But there is documentary evidence of tenancies for only about 33% of the monthly periods for all rooms and there is no documentary evidence of tenancy for the six month period September 2016 to March 2017.

7. 61 Gresham Road may have been in use as a 7 person HMO on 21 October 2014 but there is only evidence of five residents on that date, and for ten months in the following five years there is no evidence of any residents. In the absence of corroborating evidence or Statutory Declarations, the evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the claimed use of the property as a 7-bedroom HMO (*sui generis*) had gained immunity from enforcement action by the date of the application.

8. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for use as a 7-bedroom HMO (*sui generis*) at 61 Gresham Road, Bournemouth was well-founded and the appeal fails. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

***John Braithwaite***

Inspector