



Appeal Decision

Site visit made on 23 February 2026

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 March 2026

Appeal Ref: APP/Z4310/X/25/3361817

37 Arundel Avenue, Liverpool L17 3BY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Hawkesmoor Properties against the decision of Liverpool City Council.
 - The application ref 24LE/3217, dated 5 December 2024, was refused by notice dated 25 February 2025.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is a Sui Generis 8 bedrooomed HMO.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

3. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) and (b) of the Town and Country Planning Act 1990 (the Act) if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
4. Given the above, for the use to be lawful through the passage of time, it must be established that the use of the appeal property materially changed to a use for an 8 bedroom house in multiple occupation (HMO) 10 years prior to the date of the LDC application and the use then continued for at least 10 years thereafter, without significant interruption.
5. Copies of Assured Shorthold Tenancy Agreements (ASTAs) have been submitted in support of the appeal. The ASTAs covering the period of 48 weeks from 01/09/2014 and 01/08/16-29/06/17 are for a group of 8 tenants. The ASTAs covering 2020 to 2024 are for individual tenants and amount to 8 tenants at any

one time, except in 2020 when there were 7 tenants due to a room being refurbished.

6. Notwithstanding this, there are significant gaps in the relevant 10 year period that are not covered by ASTAs, including between the second half of 2015 and 31/07/16; and, from 30/06/2017 to October 2020.
7. The electoral role indicates that between 2014-2016 there were 8 people registered at the appeal property. It is reasonable to conclude from this that the other 7 people on the electoral role may have been tenants during the periods that are not covered by the ASTAs between 2015 and 2016. However, with regard to the period of 30/06/2017 to October 2020, there is only 1 person on the electoral role. Notwithstanding all of this, the electoral role is not a reliable source of evidence. It is common for students to not register on the electoral role and those that do may forget to immediately register at another address when they leave. Accordingly, I attribute the electoral role very limited weight.
8. The appellant also relies on the marketing details of the property when it was listed for sale. The appellant states the property was listed for sale in 2018 and the appellant purchased it on 13 September 2019 with vacant possession. The marketing details state it is an 8 bedroom HMO, including the use of the second reception room as a bedroom.
9. However, there is no date on the marketing details. The photographs included in it indicate it was vacant at the time with no evidence of it being occupied. Entwistle Green (estate agents) confirm the property was listed with them on 13 August 2018 with vacant possession upon listing. It appears to have then remained vacant until purchased by the appellant with vacant possession in September 2019.
10. This period of non-occupation appears to have been prolonged by the refurbishment works that the appellant confirms commenced in March 2020 and were completed in October 2020 when they advertised for new tenants. I note that there was no HMO license for the property between August 2018 and March 2020. This further undermines the reliability of the electoral role as Luke Bailey is registered at the property for 2019, but evidently the property was vacant throughout 2019.
11. This period of over 2 years of non-occupation between August 2018 and October 2020 represents a significant break in the continuity of the use of the property as an HMO. I have had regard to the appellant's intention for the property to have always been used as an HMO. Whilst this may account for the period when the property was being refurbished, it does not justify the period between August 2018 and September 2019 when the property remained vacant whilst it was on the market. This period in itself represented a significant interruption in the use of the property as an HMO.
12. I have had regard to the two affidavits submitted in support of the appeal. However, the totality of the evidence still does not indicate the property has been in use as an HMO for a continuous 10 year period.
13. I therefore find, the evidence before me is not sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, the use of the appeal property materially changed to an 8 bedroom HMO 10 years prior to 5

December 2024 and the use then continued for at least 10 years thereafter, without significant interruption. As there is no evidence before me that planning permission has been granted for the use of the appeal property for an 8 bedroom HMO at the time the LDC application was made, the use is unlawful.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development 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.

A Walker

INSPECTOR

