



Appeal Decision

Site visit not required

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 MARCH 2026

Appeal Ref: APP/C2741/X/24/3353406

60 YARBURGH WAY, YORK, YO10 5HG

- 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 Ms Deborah Clarkson against the decision of City of York Council.
 - The application ref 22/02439/CLU, dated 27 November 2022, was refused by notice dated 20 March 2024.
 - 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 large HMO – 7-8 bedrooms in continuous use prior to 2011 up to the present day.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The Planning Practice Guidance states that in the case of applications for existing use, if a local planning authority has no evidence itself, nor 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 applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether the evidence demonstrates, on the balance of probability, that on the date of the LDC application, and, owing to the passage of time, the property could lawfully be used as a large sui generis House in Multiple Occupation (HMO).

Reasons

5. The date of the LDC application is 27 November 2022. This is taken from the LDC application form. The appellant seeks confirmation that the property is lawfully a 'large' sui generis HMO, i.e., that falling outside use class C4 of the Town and

Country Planning (Use Classes) Order 1987 (as amended) and which is restricted to no more than six residents.

6. The claim made by the appellant is that the detached property has been used as a sui generis 'large' HMO for a period of more than ten years by 7 to 8 residents and, given section 171(B) of the Act, it is therefore immune from enforcement action and lawful. Alongside the appellant's statement of case, her evidence includes the submission of shorthold tenancy agreements (including some emails relating to end dates), a spreadsheet from 2011-2022 detailing the names of each occupant(s) of the bedrooms and their tenancy period (including bedroom 8 from 2018), and floor plans for 2006, 2012 and 2018.
7. Some of the shorthold tenancy agreements include end dates confirmed by email by the tenants. Given the latter, I do find it more likely than not that some of the original tenancy agreements were 'rolled over' on occasion and that some of the tenants did stay after their originally indicated end date as outlined in the associated tenancy agreement. I recognise that since at least October 2011 and until December 2022, there have been gaps in the occupancy of some of the bedrooms. This information is shown in calendar form for each year by the appellant and can be verified by cross referencing against the appellant's spreadsheet of tenants by room number (including start and end occupancy dates), and by checking this against tenancy agreement start dates.
8. Over a period of ten years, I find that the gaps where bedrooms have not been occupied are minimal and are generally confined to a matter of days between one tenant moving out and another moving in. I acknowledge that in 2014 the evidence indicates that bedroom 3 was not occupied in January and September. The same can be said for bedrooms 6 and 7 in 2015, bedroom 3 in 2017, bedroom four in 2019, and bedroom 6 in 2021. However, in the context of what is an HMO use, where occupancy is generally more transitional, I do not find that these gaps are material.
9. In my judgement, the identified gaps in bedroom occupancy are, overall, de minimis in this case. Moreover, it is not the case that there is a regular pattern of one bedroom not being used over the 2011-2022 period. There is no evidence before me that casts doubt about the de minimis gaps being because of the need to undertake repairs or refurbishment in some of the bedrooms. Furthermore, there is nothing before me to suggest that during the short and minimal periods when bedrooms were empty, and until a new tenant was found, they did not continue to provide viable facilities for immediate residential use.
10. Given the above, I do not find that the occasional gaps in occupation of some of the bedrooms is fatal from the point of view of considering the continuity of the claimed 'large' sui generis HMO use. In other words, the evidence does not demonstrate significant periods of non-occupation for the identified bedrooms, and, in my judgement, this did not result in the enforcement immunity period clock starting again.
11. The Council casts doubt about the appellant's claim about 7 residents occupying the property in 2015. This is based on a planning enforcement officer site visit to the appeal property which took place on 13 July 2015. Following this visit, the evidence indicates that a tenant occupying the property confirmed in writing to the Council (26 August 2015) that there were *'five people living in the property'*.

12. I have carefully considered this evidence and cross referenced it against the spreadsheet and tenancy agreements submitted by the appellant. While I have not been provided with a copy of the above letter, the appellant does not dispute that on 13 July 2015 (i.e., that specific day), the property was occupied by five residents.
13. It is noteworthy that the appellant's evidence (including the spreadsheet) was prepared and submitted to the Council prior to the planning officer's report being available and the 13 July 2015 date being known. In this regard, I therefore find it unlikely that the appellant's evidence was prepared with the date of the planning officer site visit in mind. Moreover, the evidence indicates that the appellant was not aware of the site visit, or indeed the letter dated 26 August 2015.
14. In my judgement, the evidence sufficiently demonstrates that when the planning officer visited the site, the schedule of occupancy demonstrated a de minimis gap in the tenancy of bedrooms 3 and 7. The evidence is that the tenants of these bedrooms departed on 12 July 2015 and 30 June 2015 respectively. The evidence is that these bedrooms were occupied again by the date of the 26 August 2015 letter sent to the Council. The evidence also shows that occupancy for five out of seven of the bedrooms at this time changed between July and August 2015.
15. While the evidence does demonstrate that on 13 July 2015 only five persons were occupying the appeal property, this was for only a very short and de minimis period and occupation was very soon at a level of seven persons. Consequently, I do not find that circumstances surrounding the planning enforcement site visit on 13 July 2015 are such that they are sufficient to cast doubt over the appellant's version of events, or the claim of continuous ten years use as a sui generis large HMO.
16. For the above reasons, and, on the balance of probability, I conclude that the evidence is sufficiently precise and unambiguous for me to find that from at least October 2011 and until the date of the LDC application (21 November 2022) the property has been used as a 'large' sui generis HMO. In considering this matter, I have assessed the appellant's evidence in terms of actual occupation by persons on a year-by-year basis. The evidence is that it was not until 2018 that the property was occupied by eight persons. I do, however, find, on the balance of probability, that the evidence is sufficiently precise and unambiguous to support the appellant's claim about a continuous ten-year use of the property as a 7-person sui generis HMO. In this regard, I conclude that such a use of the property is immune from enforcement action and hence is lawful.
17. It is important that an LDC is sufficiently precise in terms of describing what is lawful. Given my conclusion above, I shall therefore issue an LDC relating to a 7-person sui generis HMO. The reference to a '7-person' sui generis HMO is important as it provides a baseline by which the Council can consider any increase in occupancy over and above 7-persons. This is relevant from the point of view of assessing any possible material change of use of the building in accordance with section 55(1) of the Act.

Conclusion

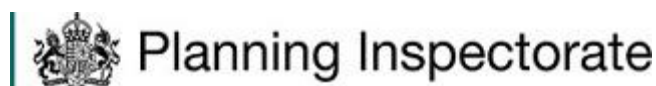
18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a large HMO – 7-8 bedrooms in

continuous use prior to 2011 up to the present day is not well-founded and that the appeal should succeed.

19. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

D Hartley

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 27 November 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plans attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The property has been continuously used as a 7-person sui generis House in Multiple Occupation for a period of more than ten years from October 2011 until 27 November 2022 and hence is immune from enforcement action and lawful.

Signed

D Hartley

Inspector

Date: **17 MARCH 2026**

Reference: APP/C2741/X/24/3353406

First Schedule

7-person sui generis House in Multiple Occupation

Second Schedule

Land at 60 Yarburgh Way, York, YO10 5HG

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 17 MARCH 2026

by D Hartley BA (Hons) MTP MBA MRTPI

Land at: 60 Yarburgh Way, York, YO10 5HG

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Scale: Not to Scale

