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## Appeal Decision

Site visit made on 23 February 2026

**by A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 19 March 2026**

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**Appeal Ref: APP/Z4310/X/25/3365975**

**138 Upper Parliament Street, Liverpool, Merseyside L8 7LG**

- 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 Mrs Rosemary Hogarth against the decision of Liverpool City Council.
  - The application ref 24LE/1431, dated 5 February 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 a certificate of lawful use or development is sought is described as 'Student accommodation (HMO 11 occupants).'
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### 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. For the change of use to be authorised through the passage of time, the appellant must show that the use has continued for at least 10 years prior to the date of the application, as set out in s.171B(3) of the Act. If the property was continually in that use for a ten-year period prior to 5 February 2024, without significant interruption, it would subsequently be lawful.
5. A use could only become lawful if it continued throughout the relevant immunity period, to the extent that the Council could have taken enforcement action at any time. If the use ceased during that period, as a matter of fact and degree, the time could not count towards immunity. This is a different position to where there is an

existing lawful use which could be unoccupied for lengthy periods without losing its lawful use.

6. A 'large HMO' is 'sui generis', or outside of any use class, for the purposes of the Town and Country Planning (Use Classes) Order 1987 (the UCO). The UCO describes a Class C4 HMO as 'Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"'. Therefore, a large HMO (sui generis) comprises a dwellinghouse used by more than six residents.
7. The statutory declaration of the appellant states that they bought the appeal property in 1969 and in March 1970 they obtained planning permission to convert the property into 2 maisonettes and 1 flat and that the property has remained in this format ever since. However, there are no details before of this planning permission to be certain what was approved, including the layout of the building.
8. I have had regard to all of the statutory declarations submitted. However, whilst they all refer to the use of the property as an HMO, they make little reference to occupancy levels over the years.
9. The appellant provides details of occupancy levels for the appeal property dating from 2013 to 2023. Throughout this period, the number of occupants fluctuates between 6 and 11 residents. The parties refer to Assured Shorthold Tenancy Agreements (ASTAs) in support of these occupancy levels. I have not been provided with these. Nevertheless, there is no evidence that the content of the ASTAs is in dispute.
10. Occupancy levels of HMOs can fluctuate, but this does not necessarily result in a material change in the use of the property. The property was occupied by only 6 residents for three separate years throughout this period, with two of these years being consecutive (2019 and 2020). The appellant contends that there were only 6 occupants in 2015/2016 due to a group of 4 people not proceeding with the tenancy of flat 2. Be that as it may, the property was nevertheless only occupied by 6 people. The UCO clearly states that a Class C4 HMO is the use of a dwellinghouse by not more than six *residents*. It does not refer to the number of bedrooms nor the capacity of the building. Therefore, during the period of 2015/2016, the appeal property was in use as a Class C4 HMO.
11. Similarly, in 2019 there were only 6 occupants because 4 students failed to proceed with their tenancy. Again, during this period the property was in use as a Class C4 HMO. I also note that flat 2 was being refurbished in 2020, hence only 6 occupants that year. However, given there were only 6 residents for the previous year, it remained in Class C4 HMO use.
12. I acknowledge there can be interruptions in the use without it affecting the continuous use of the property. However, a total of three years in a ten-year period is a significant interruption. Whilst I understand the reasons why the property was only occupied by six residents during this period, there is little evidence to explain that it was always the intention to use the property as a large HMO. In any event, regardless of intention, it is the actual use that determines the use class. Moreover, there is no evidence indicating what refurbishment works took place and how long they took to complete. Such works are typically carried out during periods when students have vacated the property in order to minimise loss of occupancy.

13. Given the above, I have found that during the ten-year period, the use of the appeal property fluctuated between a Class C4 HMO and a large HMO. Therefore, there was a change in the use of the property through each of these fluctuations. The crux of the matter is whether these changes of use were material changes of use that amounted to development for the purposes of section 55 of the Town and Country Planning Act 1990.
14. To establish whether a material change of use has occurred, a comparison between the uses needs to be made, as opposed to considering a hypothetical range of activities. For a material change of use to have occurred, there must be some significant difference in the character of the activities, from what has gone on previously. The assessment is a matter of fact and degree, for the decision maker to determine on the available evidence.
15. Based on the occupancy rates provided, the use of the property by 6 residents in 2015/2016 was followed by its use by 11 residents. This is a substantial increase in the number of occupants, almost double the amount. The property itself would not have been physically altered as it already had the capacity to accommodate up to 11 residents. Nevertheless, the character of the activities taking place at the property would likely have significantly changed. There would have been a marked increase in the level of comings and goings by the residents, almost twice as much as those previously taking place. Therefore, I find that this would have been a material change in the use of the property and as such represented a significant interruption in the period of immunity.
16. I find therefore, the appellant has not demonstrated, on the balance of probabilities, that the material change of use to a large HMO occurred on or before the 5 February 2014 and continued for at least 10 years after the date of change without any significant interruption.

### **Conclusion**

17. I therefore conclude that the Council's refusal to grant a certificate of lawful use 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