



Appeal Decision

Hearing held on 21 April 2026

Site visit made on 21 April 2026

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th May 2026

Appeal Ref: APP/U2615/X/25/3376590

82-84 Walpole Road, Great Yarmouth NR30 4NG

- 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 Mr Barrett on behalf of Barret Asset Management Ltd. (the appellant) against the decision of Great Yarmouth Borough Council (the Council).
 - The application ref 06/25/0606/PU, dated 25 July 2025, was refused by notice dated 28 October 2025.
 - The application was made under section 192(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 to confirm that the existing use as a House in Multiple Occupation comprising a self-contained, three-bedroom Owner's or Manager's Flat and 15no. letting bedrooms and associated facilities would not need planning permission to convert the Owner's/Manager's Flat and to undertake internal alterations and thereafter to use the entirety of the building and curtilage as a 20-bedroom, 20-person (single person occupancy) House in Multiple Occupation (Sui Generis use).
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Decision

1. The appeal is dismissed.

Applications for costs

2. Prior to the Hearing, an application for costs was made by the appellant against the Council. In addition, at the Hearing an application for costs was made by the Council against the appellant. These applications will be the subject of a separate Decision.

Preliminary Matters

3. The Pre-Hearing note sought clarification from both parties with regard to proposed description of development (DoD) and which proposed plan is to be considered, since a revised DoD and a proposed plan were submitted with this appeal. The parties agreed during the Hearing that the proposed DoD (set out in the banner hearing above), and the original proposed plan submitted with the application (drawing number 371.03 dated July 2025) is to be considered. I have therefore determined the appeal on this basis.
4. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance in the context of an appeal made under section 195 of the 1990 Act as amended. The appellant must show, on the

balance of probabilities, that the development proposed, at the date of application, would be lawful.

Main Issue

5. The main issue is whether the Council's refusal of an LDC was well founded. For this it is necessary to consider whether the proposed use would represent a material change of use (MCU) from the lawful use.

Reasons

Whether the proposed use would constitute an MCU

6. Under Section 55(1) of the 1990 Act, "development" is defined as including the making of any "material change in use of any buildings or any other land". The Council's case is that the proposed use would amount to an MCU. In particular, the Council consider that the removal of the manager's or owner's self-contained flat, by carrying out internal works, and increasing the number of bedroom/persons from 15 to 20 would result in an MCU. The appellant disagrees.
7. The concept of an MCU is not defined in statute or statutory instrument. The basic approach is that, for an MCU to have occurred, there must be a significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. The planning consequences of the change may be relevant, but a change of use which leads to an 'improvement' in respect of planning merits can amount to an MCU just as one that causes harm.
8. The intensification of a use may amount to an MCU if and where that causes the character of the use to change in a fundamental way. It applies when the former and present uses can only be distinguished in terms of scale and effects related to scale. In *Hertfordshire CC v SSCLG & Metal and Waste Recycling Ltd* [2012] EWCA Civ 1473, the Court of Appeal held that the Inspector applied the right test: 'What must be determined is whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in a such a change in the definable character of the use that it amounts to a MCU'.
9. The intensification of one element of a dual or mixed use to the exclusion of the other may amount to an MCU of the unit as a whole. The High Court held in *Beach v SSETR & Runnymede BC* [2001] EWHC 381 (Admin) that the correct approach when new primary uses are added to a mix, so that A+B becomes A+B+C, is to ask whether that has amounted to an MCU. The same approach should be followed where one element of a mixed use is ceased.
10. When considering whether alleged intensification has resulted in an MCU, it is necessary to examine what is happening on the land and as suggested above, any off-site impacts.
11. In the first instance, to assess the materiality of any change of use, it is necessary to establish the appropriate planning unit. In this case, the planning unit is the area of the site outlined in red on the plan which accompanied the LDC application. This relates to three Victorian two-storey mid-terraced properties, with rooms in the loft space, known as 82-84 Walpole Road.

12. A previous certificate of lawful use was granted on 28 May 2023 for the use of the property as a house in multiple occupation (HMO) comprising a self-contained three bedroomed Owner's or Manager's flat on the ground floor and 15 letting bedrooms, two communal sitting areas, one communal dining room, seven shared toilets and three shared shower rooms in the remainder of the property (the 2003 LDC¹). The HMO site licence dated 21 November 2025 confirms that the maximum number of residents and the maximum number of households is both 15. This was also confirmed as the appropriate baseline at the Hearing.
13. The parties agree that the site is in use as a single planning unit. However, there is a dispute whether this is a mixed-use of a 15-bedroom HMO and a self-contained manager's/owner's flat. The appellant consider it is not a mixed-use and has referred to the *Welwyn Hatfield* Judgement² in support of their claim.
14. The 15-bedroom HMO and the self-contained manager's or owner's flat are both clearly primary uses. The primary uses are contained within the same building, in the same ownership, and are thus physically linked. The primary uses share the same front entrance, although it is noted that a separate access is also provided for the owner's/manager's flat via the rear yard. There is a functional relationship between the self-contained flat, and the 15-bedroom HMO use due to the occupation of the flat by the owner or manager of HMO who would have been involved with the operation and management of the HMO. Furthermore, neither use could be said to be incidental to the other. Therefore, the use certified by the 2003 LDC is conclusively presumed and, as a matter of fact and degree, can be properly described as a mixed-use planning unit of a manager's or owner's self-contained three-bedroom flat and a 15-bedroom, 15 person HMO.
15. The proposal seeks to increase number of persons to 20 bedroom and 20 persons, by carrying out internal renovation works which include the removal of the self-contained three-bedroom manager's flat in its entirety. This would result in an 33% increase in HMO occupiers above the lawful HMO use.
16. The proposed plans indicate that the shared facilities would comprise:
 - Ground Floor: 2 x kitchen diners; 1 sitting area (which is combined with the entrance lobby for the HMO); and 1 bathroom.
 - First Floor: 1 kitchen; 3 x shower rooms and 3 x toilets.
 - Second Floor: 1 kitchen and 1 toilet.
17. The breakdown of HMO rooms/persons per floor would comprise:
 - Ground Floor (8 bedrooms/8 persons): Rooms 1, 14, 15, 16, 17, 18, 19, 20
 - First Floor (8 bedrooms/8 persons): Rooms 2, 4, 5, 6, 7, 8, 9, 10
 - Second Floor (4 bedrooms/ 4 persons): Rooms 3, 11, 12, 13
18. As outlined above, both onsite and off-site effects may be highly relevant to whether there has been an MCU. The Council consider that the proposed loss of the owner's/manager's flat, and the quality of the living environment for both future occupiers of the appeal site and neighbouring residential occupiers is particularly

¹ Council ref: 06/03/0318/EU.

² *Welwyn Hatfield BC v SSHCLG & Ismail Kabala (IP)* [2022] EWHC 3175 (Admin).

relevant to this matter and have highlighted a number of factors which are relevant to the intensification. Indeed, the proposed internal changes to the building and their impact on the HMO's occupiers should be taken into account in assessing whether there would be an MCU, because they go to the heart of whether there would be a change in character of the HMO use. It is also necessary to consider the planning consequences of any relevant change in the character.

19. Firstly, the Council have raised concerns that the proposed intensification of the HMO use, together with the complete removal of the manager's/owner's flat, results in an increased reliance on the limited communal facilities proposed and, that there is less communal space, and access to shared toilets/showers pro rata than the lawful 2003 scheme.
20. In particular, despite the proposed increase in occupation of the HMO there is only one communal sitting/living room on the ground floor for the HMO. The useability of this space is also hampered since it also forms part of the proposed entrance lobby for the 20 persons HMO and therefore is unlikely not provide a quiet space for the 20 occupiers of the HMO to sit and relax. Furthermore, the two proposed dining rooms are both located at ground floor level and are not convenient for the 12 persons/bedrooms located on the first and second floors. The second-floor occupiers in particular would have to go down two flights of stairs to be able to sit and dine.
21. These limited internal communal spaces would increase the reliance on shared outside amenity space. However, only one small rear yard is provided for the entire 20 person HMO. The proposed intensified use of this small yard increases the likelihood for potential noise and disturbance issues to future occupiers of the HMO itself, and neighbouring residential occupiers, whose habitable room windows and gardens are located close to the appeal site.
22. The proposed configuration and the lack of appropriate levels of onsite shared communal spaces and private amenity space could potentially lead to patterns of occupation where HMO occupiers spend a disproportionate amount of time in their private bedrooms, which could foster isolation, and create a cramped and poor-quality living conditions for future occupiers.
23. Furthermore, an additional 5 HMO occupiers would require additional refuse and cycle storage. During my site visit I observed that there are already 8 wheelie bins (4 refuse and 4 recycling bins) at the frontage of the site within the small front garden area. Most other dwellings only had a couple of bins in front of their properties.
24. A 33% increase in HMO occupiers would potentially result in additional 2/3 additional wheelie bins and 5 extra cycles to be stored. The appellant considers that cycle storage could be provided within the existing rear yard. However, no storage areas are shown on the proposed plans, and it is unclear how suitable and easily accessible this rear yard would be for cyclists. For instance, tenants would have to navigate their cycles through narrow hallways and the shared dining and kitchen area at ground floor level to access this area.
25. As such, in the absence of clearer evidence it appears that the very narrow front garden at the appeal site would be dominated by a proliferation of unsightly wheelie bins and also cycles. Indeed, the potential over concentration of wheelie bins at the frontage of the site, close to HMO occupiers and neighbouring residential windows

has the potential to harm not only the residential character of the area, but also the quality of the living conditions for occupiers of HMO and adjacent residential neighbours.

26. Indeed, during my site inspection visit I observed that the appeal site is situated within in a relatively quiet residential street, with terraced properties positioned close together. Therefore, there is a susceptibility for the living conditions of neighbouring occupiers to be affected by the introduction of a more intensive use of the appeal site. The proposed HMO use with 5 additional HMO occupiers, over and above the lawful 15 bedroom/15 person HMO, would potentially have greater effect on the living conditions of future occupiers of the HMO as well as neighbouring residential occupiers, than the lawful HMO with a self-contained manager's/owner's flat.
27. For instance, these 5 additional occupiers consist of 5 unrelated individuals, all of whom would have separate work/domestic regimes and would attract their own visitors and deliveries at different times during the day and evening. In this respect, the proposed 20 bedroom/person HMO use is more likely to increase the volume of movements to and from the property, and the range of times when these activities take place.
28. Furthermore, the onsite self-contained manager's/owner's flat element of the mixed use would be not replaced. Without this onsite management presence, any noise and disturbance issues resulting from the HMO use, would be less likely to be dealt with swiftly when compared to the lawful HMO and self-contained flat use. Thus, the proposed HMO occupied by up to 20 persons would potentially have harmful on and off-site effects on the living conditions of the occupiers of the HMO and neighbouring residential occupiers with regard to noise and disturbance.
29. For the reasons outlined above, the proposal would be an intensification of the existing use of the site resulting in a considerable and fundamental change in its character from a mixed use of a 15 bedroom/person HMO and a self-contained manager's/owner's flat to a single use 20 bedroom/person HMO. In addition, when considered against all of the potential onsite and off-site impacts outlined above, I consider this change has the potential for significant planning consequences and is materially different from the lawful HMO use, such that a MCU could be said to arise. The existence of an HMO Licence and the Letting Management Plan would not be sufficient to prevent this change from being material.
30. As a matter of fact and degree, and on the balance of probabilities, I find that there would be a MCU of the lawful mixed use of the site, for which planning permission would be required. On that basis, the requested certificate that such a use would be lawful cannot be granted. Therefore, the LDC cannot be issued.

Other Matters

31. Both parties have submitted a number of appeal decisions and authorities in support of their cases. However, from my reading of these it is clear that each decision falls to be considered, as a matter of fact and degree, and based on the site-specific circumstances, and the evidence before the decision maker. Indeed, a number of the appeal decisions relied upon by the appellant are not the same circumstances as the current proposals. As such, the current appeal which relates to a lawful mixed use of a manager's/owner's self-contained flat, and a 15-bedroom HMO use is distinctly different to the other appeal decisions cited. Whilst I have

had regard to all of these, I have based my decision on the site-specific circumstances and evidence before me and have explained why, on this occasion, there would be an MCU.

32. Furthermore, the appellant stated during the Hearing that the labelling of 'Room 1' on the proposed plan is not correct and that the sitting area, kitchenette and shower room shown within this Room 1 should have shown a shared communal kitchen, sitting area and shower room for all occupiers of the HMO to use. When asked why the proposed plans state "Room 1" for this area and why did the revise proposed plan, with hatching indicating that this entire Room 1 would become a manager's Room (now withdrawn at the Hearing) he stated that the proposed plans are ambiguous, and that this area should have shown a communal space.
33. I find this very disappointing and highly unusual to get to the appeal stage with plans which are not accurate or representative of the scheme the appellant is seeking a LDC for. Indeed, the Planning Practice Guidance (PPG) on the LDCs states that "The applicant is responsible for providing sufficient information to support an application" and "In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved³."
34. Therefore, given the appellant's own admission during the Hearing that the proposed plans are ambiguous neither the Council nor myself, are able to rely on these drawings, in so far as they fail to illustrate the scheme which is proposed. Therefore, the LDC cannot be issued for this additional reason.

Conclusion

35. I conclude that the Council's refusal to grant a certificate of lawful use or development for the proposed use was 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.

R Satheesan

INSPECTOR

³ Paragraph: 006 Reference ID: 17c-006-20140306 Revision date: 06 03 2014.

APPEARANCES

FOR THE APPELLANT:

Jonathan McDermott, Principal Town Planner, Town Planning Expert

Joseph Orbell, Town Planner, Town Planning Expert

FOR THE LOCAL PLANNING AUTHORITY:

Robert Parkinson, Development Manager for Great Yarmouth Borough Council

Robert Tate, Principal Planning Officer for Great Yarmouth Borough Council

DOCUMENTS SUBMITTED DURING THE HEARING

1. Agreed description of development for this LDC appeal.
2. Welwyn Hatfield BC v SSHCLG & Ismail Kabala (IP) [2022] EWHC 3175 (Admin).
3. Sage v Secretary of State for Housing, Local Government and Communities [2021] EWHC 2885 (Admin),
4. Council's cost application.