



Appeal Decision

Site visit made on 21 May 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2026

Appeal Ref: APP/V2004/X/25/3360477

11 Melbourne Street, Hull, HU5 2ET

- 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 Multipoint Holdings Ltd against the decision of Kingston-Upon-Hull City Council.
 - The application ref 24/00740/LAW, dated 2 August 2024, was refused by notice dated 24 January 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 House in Multiple Occupation for a maximum of 3 occupants with a shared kitchen and bathroom facilities (relates to the whole of property).
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Decision

1. The appeal is dismissed.

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. The burden of proof in respect of LDC applications made under section 191 of the Act lies with the applicant and the relevant test of the evidence is on the balance of probability.
3. The Planning Practice Guidance states 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 on the date of the LDC application the appeal property was lawfully a house in multiple occupation (HMO) falling within class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

Reasons

5. The evidence is that the property currently has three bedrooms with one on the ground floor and a further two on the first floor. The appellant states that the property has been used as a class C4 HMO from 1 August 2013 and until the date of the LDC application, i.e., 2 August 2024. Schedule 14(7) of the Housing Act 2004 states that a property is not an HMO if it is occupied by two persons who form two households. The onus is therefore on the appellant to demonstrate that the appeal property has been continuously used as a class C4 HMO (i.e., three or more occupants forming separate households) for a period of at least ten years having regard to section 171(B) of the Act.
6. The Council's Private Housing (Environmental Health) service has commented that the *'property was in use as a student HMO when it was inspected on 24 May 2012'*. I do not know how many students occupied the property at this time, and for how long, and nor do I have any further and precise evidence pre-dating 24 May 2012. I do not have details of any floorplans at this time or details of how the different rooms in the property were used. Nonetheless, there is no dispute between the main parties that the property has at least been let out to students/individuals since 1 August 2013.
7. Apart from a tenancy agreement gap of about five-six months between the first tenancy agreement ending in July 2014, and the next tenancy agreement starting on 23 January 2015, the evidence indicates that the property has essentially been occupied by three unrelated individuals save for very short gaps between one set of tenants leaving and new ones arriving. The exceptions are in 2020/2021, 2021/2022, 2022/2023 and part of the 2023/2024 academic years, where the evidence is that only two unrelated individuals occupied the property.
8. The appellant states that in respect of the 2020-2023 period the property was advertised as a three-bedroom HMO, but due to the Covid-19 Pandemic it was necessary to offer the property based on lower occupancy. This suggests to me that there was therefore an intention for the property to only be occupied by two persons at this time, and despite any marketing literature.
9. The appellant states that what was the ground floor bedroom was available for use as a study room with a desk and that all other bedroom furniture was taken out of such a room. The tenancy agreement dated 15 October 2020 states *'Room 1 to be used as a study room, as currently been used'*. This indicates to me that from 2020 and prior to 1 August 2023 there was a deliberate intention to physically remove a third bedroom in favour of its use as a study room. Hence, the property was not available for use by more than two persons. As a matter of fact and degree, I therefore find that during this time the property was not in use as a class C4 HMO. I reach this conclusion irrespective of the circumstances relating to the Covid-19 pandemic.
10. The tenancy agreements show that for the second half of the 2023-2024 academic year, the property was occupied by two tenants who had individual tenancy agreements. This is a significant period when the property was occupied by only two tenants. There were no Covid-19 restrictions in place at this time which would have reasonably precluded occupation by more than two persons.
11. The Covid-19 pandemic restrictions essentially ended in early 2022. The evidence is that between 2020 and up to 1 August 2023 there were not three bedrooms

available for occupation by those that did not form part of the same household. The evidence is that the property has been used for very prolonged periods by only two unrelated persons. Even accounting for the Covid-19 restrictions/guidance, much of the above other time relates to a period after the Covid-19 restrictions were lifted. Moreover, the evidence indicates that there was a material gap in the actual use of the property between July 2014 and January 2015.

12. Based on the above facts, I conclude that the evidence does not precisely and unambiguously support, on the balance of probability, the appellant's contention that the property has been used continuously as a class C4 HMO for ten years. In fact, the evidence demonstrates either a significant period of non-occupation, or significant periods when only two persons occupied the property.
13. Even if I exclude the Covid-19 restrictions period, the identified empty period and the times when the property was used only by two persons is such that the 'ten-year immunity clock' started again. These periods are too long to be judged as being de minimis even if I exclude the period when the Covid-19 restrictions were in place. It is also important that I emphasise that during the period when the property was occupied by two persons, and the third bedroom was used as a study/lounge, it is my judgement that the local planning authority could not have initiated enforcement action.
14. While I note the comment made by the occupier of No. 9 Melbourne Street that the *'property has been let out to multiple students for approximately 20-25 years with no notification to the neighbours'*, this is not supported with any precise or unambiguous objective evidence relating to the number of occupants, the continuity of the HMO use, the physical configuration and use of the rooms in the property, and/or the intentions of the landlord(s)/owner(s), to substantiate such a claim being made.

Conclusion

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a House in Multiple Occupation for a maximum of 3 occupants with a shared kitchen and bathroom facilities (relates to the whole of property) 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).

D Hartley

INSPECTOR