



Appeal Decision

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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/25/3360486

16 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 24/00741/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 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 states that its records suggest that the property was in use as a student HMO from February 2013. I do not know how many students occupied the property at this time or before, or indeed how the property was internally configured. There is an absence of precise and unambiguous evidence to sit alongside the comment received from the Council's Private Housing (Environmental health) service. It is also noteworthy that the Council's Council Tax service representative has commented that between '*1 August 2006 to present*' there have been between two and three occupiers of the property. This suggests a fluctuating picture of occupants in the property and that it has not always been used as a class C4 HMO.
7. There is no dispute between the parties that the property was occupied as a three person HMO from 1 August 2013 until 1 August 2019. This is based on the submitted tenancy agreements. On the balance of probability, I have no reason to disagree with this common ground position.
8. Notwithstanding the above, the evidence is that only two tenants occupied the property on 1 August 2019. The tenancy agreement relating to such occupation by two tenants was fifty weeks. This constitutes a very significant period when the property was not actually in use as a class C4 HMO. I do not have precise evidence before me to know if the property was configured in such a way at this time that the third bedroom was set up for use by an additional occupant. The appellant asserts that it was but, in any event, says that '*it must be highlighted that the underoccupancy during the years 2018-19 and 2019-20 (2 tenants) were due to being unable to secure a tenant for a third room*'.
9. On the evidence that is before me, I find, on the balance of probability, that between 1 August 2019 and 1 September 2020 (i.e., the date of the next tenancy agreement) the local planning authority could not have initiated enforcement action in respect of use of the property as a class C4 HMO. The interruption in the use of the property as a class C4 HMO goes beyond what could be said to be de minimis. It is of such significance that when evidence is considered in the round, I find that it constitutes a material break in the former use of the property as a class C4 HMO and to the extent that the 'ten-year immunity clock' started again. Occupation of the property by two tenants on 1 August 2019 pre-dates the start of the Covid-19 pandemic by several months and hence any associated restrictions/guidance.
10. In respect of the 43-week tenancy agreement, which commenced on 22 September 2020, the property was occupied by only two tenants. The appellant refers to the difficulties relating to securing tenants during this time owing the Covid-19 pandemic and associated restrictions/guidance. It is stated that many did

not want to share houses as part of a cohesive group during this time and hence the property was offered on a lower level of occupancy.

11. The evidence in the form of a note on the tenancy agreement is that during this time the third bedroom was to be '*empty and unoccupied*' and '*used as a study room*'. There is no evidence to indicate that the property was not configured or set up in this way during this tenancy agreement period. This indicates to me that there was a clear intention to physically change the property internally and that at this time the third bedroom was not available for occupation by a third tenant.
12. While not determinative in this case, given the other interruption in the class C4 use of the property as outlined above, I nonetheless find that the 43-week period of use of the property by two persons is such that it was not in use as class C4 HMO. At this time, it is my judgement that the local planning authority could not have initiated enforcement action. I consider that this period constitutes a further significant break in the use of the property as a class C4 HMO.
13. While there is no dispute between the main parties that the tenancy agreements for the 2023/2024 academic year, and from 1 August 2024 (48 week tenancy), are sufficient to show that the property has been occupied continuously by three unrelated tenants, this does not change my finding that there are significant periods from 1 August 2013 and until the date of the LDC application where the property was not in use as a class C4 HMO. Indeed, the appellant has not proven, on the balance of probability, that the property has been used for a continuous ten-year period as a class C4 HMO prior to the date of the LDC application. Consequently, such a use is not immune from enforcement action and hence it is not lawful.

Conclusion

14. 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