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## Appeal Decision

Site visit made on 19 May 2026

**by M Ollerenshaw BSc (Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2<sup>nd</sup> June 2026

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**Appeal Ref: APP/J2373/C/25/3376436**

**Land and building known as 34 King Edward Avenue, Blackpool, FY2 9TA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
  - The appeal is made by Mr Ka Chi Fok, KC Hotel (Hong Kong) Limited against an enforcement notice issued by Blackpool Borough Council.
  - The notice was issued on 30 October 2025.
  - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property from a hotel to a house in multiple occupation ("HMO").
  - The requirements of the notice are: cease using the property as a house in multiple occupation ("HMO").
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the ground set out in section 174(2)(b) of the Town and Country Planning Act 1990 (as amended).
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### Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

### Preliminary Matters

2. The appellant indicates that a planning application has been submitted to the Council for the change of use of the appeal premises as an alternative means of resolving the enforcement action. I also note that the third-party comments refer, amongst other things, to the effects of the development on the surrounding area. However, as there is no appeal on ground (a) and thus no deemed planning application before me, I am not considering the planning merits of the case.
3. Whilst I note the appellant's concerns regarding the adequacy of the Council's investigation of the case including the identification of individuals involved and the nature of the evidence relied upon, I have considered the evidence before me as a whole. I see no substantive reason to doubt the reliability of the Council's evidence.
4. In their final comments the appellant indicates that they would not pursue an award of costs should the appeal be allowed. However, no formal application for costs has been made.

### The ground (b) appeal

5. An appeal on ground (b) is that the matters stated in the notice have not occurred. The onus is on the appellant to make their case, with the relevant test of the evidence being on the balance of probabilities.
6. The appeal property is a substantial three storey terraced building, known as Kings Court Hotel, which is situated in a row of hotel premises on the northern side of King Edward Avenue close to the Promenade. During my visit I was able to see

that the internal layout of the building is typical of a hotel. The accommodation at ground floor level includes a lounge, dining room, bar and commercial kitchen and on the upper floors there are 12 guest bedrooms with en-suite facilities. Whilst some of the rooms were being used for storage and the building did not appear to be in active use, there is no dispute that its lawful use is as a hotel.

7. The Council states that the current occupation of the building by 7 persons within 2 households constitutes a material change of use to a sui generis HMO. However, the notice does not specify that the alleged use is sui generis, but instead alleges a material change of use to an HMO. Whilst the notice does not state which class of the Town and Country (Use Classes) Order 1987 (as amended) (the Use Classes Order) the alleged use falls within, this is not determinative of whether the use can properly be described as an HMO, and therefore whether the breach has occurred.
8. Reference is made in the appellant's submissions to the provisions of the Housing Act 2004, which define an HMO by reference, amongst other things, to occupation by persons who do not form a single household and who share basic amenities. However, whether or not there has been a material change of use must be determined having regard to the provisions of the Town and Country Planning Act 1990 (the 1990 Act) and is based on the character of the use.
9. The appellant's case is that the alleged material change of use of the property to a HMO has not occurred, but that it is instead used as a dwellinghouse within use class C3. The Use Classes Order defines class C3 as use as a dwellinghouse (whether or not as a sole or main residence) by (a) a single person or by people to be regarded as forming a single household; (b) not more than 6 residents living together as a single household where care is provided for residents; or (c) not more than 6 residents living together as a single household where no care is provided to residents (other than use within class C4). Therefore, the key consideration in determining whether a use falls within class C3 is whether the occupiers function as a single household.
10. The appellant states that they originally purchased the building to accommodate Hong Kong residents following the 2019 protests, and that it was used to accommodate various individuals from Hong Kong from 2021 to about mid-2024. Following complaints alleging the material change of use of the hotel to permanent residential accommodation, the Council carried out an inspection of the property in July 2023 as part of a multi-agency visit. At that time the Council says there were 12 residents (that number of occupiers corresponding to the number of bedrooms in the property), who were said to have relocated to the UK and were staying in the property whilst looking for work and alternative accommodation. There was also a cleaner who confirmed they had been living in the property for 3 to 4 months.
11. There is no substantive evidence before me as to the occupiers' precise living arrangements at that time or the length of each stay, but there is no suggestion that they were living at the property either as hotel guests or as a single household. Given the large number of occupiers and the size and layout of the building, including the self-contained nature of the bedrooms, I find on the balance of probabilities that the property was used at that time as an HMO with the residents sharing basic amenities, which amounts to the material change of use alleged in the notice.

12. A subsequent Council inspection in September 2025 found that 7 of the bedrooms were occupied by permanent residents. Following that visit the owner confirmed that the property was occupied by 2 families sharing facilities. The appellant's evidence suggests that they and their partner and their respective family members moved in around the middle of 2024, and were living together as a single household, the previous occupiers having by then left the premises. The appellant says that in November 2025 the property was occupied by 7 persons, these being 5 members of their family and 2 members of the co-owner's family, who shared the use of kitchen facilities and had joint domestic arrangements, including household expenses. The appellant goes on to say that there has since been a change in circumstances and that there are currently only 3 members of their family living at the premises. This sequence of events therefore indicates that by late 2025 the property was occupied by members of the appellant's and the co-owner's family, living together as a single household, which is indicative of a dwellinghouse use.
13. However, section 174(2)(b) of the 1990 Act is worded in the past tense. An appeal on ground (b) cannot succeed simply on the basis that the alleged activities may have ceased since the notice was issued. The question is whether the breach had occurred as a matter of fact and degree prior to the issue of the notice. Between 2021 and 2024 the evidence points to there being 12 residents living in the property. In the absence of evidence to demonstrate that the occupiers were living together as a single household, I consider that the use of the property at that time constituted an HMO. The fact that the character of the occupation may have subsequently changed, including by the time the notice was issued, does not alter my finding that the breach had occurred.
14. Accordingly, based on the evidence before me and on the balance of probabilities, I conclude that the appellant has failed to demonstrate that the matters alleged in the notice have not occurred. The appeal on ground (b) therefore fails.

### **Conclusion**

15. For the reasons given above, I conclude that the appeal should not succeed, and I shall uphold the enforcement notice.

*M Ollerenshaw*

INSPECTOR