Planning Inspectorate

Appeal Decision

by Jean Russell MA FRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2026

Appeal ref: APP/N4720/X/25/3374668
14 Hessle Avenue, Hyde Park, LEEDS, LS6 1EF

- The appeal is made by Mr Bradley Marshall o/b Martial Limited under section 195 of the Town and Country Planning Act 1990 (as amended) against the decision of Leeds City Council to refuse to grant a certificate of lawful use or development (LDC).
- The LDC application (ref: 25/01260/CLE) was dated 28 February 2025 and refused by notice dated 25 April 2025. It was made under section 191(1)(a) of the Town and Country Planning Act 1990 for an existing use described below.

DECISION

1. The appeal is dismissed.

PRELIMINARY MATTERS

Description of Development

2. The application for a lawful development certificate (LDC) contained different descriptions of the subject use, some of which conflated the use with reasons why it might be lawful. Nonetheless, the use is clear from the form overall and I can therefore exercise the power set out under section 191(4) of the Town and Country Planning Act 1990 (TCPA90) to modify the description.

3. Indeed, the appeal form suggests that the appellant has already accepted the modified description adopted by the Council. I shall consider this appeal on the same basis but add more detail to the description for clarity and precision:

   "The use of [14 Hessle Avenue] as a small House in Multiple Occupation by not more than six residents, being a use falling within use class C4 as set out in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987."

4. Use class C4 is described in the Town and Country Planning (Use Classes) Order 1987 (the UCO) as 'use of a dwellinghouse by not more than six residents as a "house in multiple occupation"'. In this context, the term "house in multiple occupation" (HMO) has the same meaning, albeit with one exception, as set under s254 of the Housing Act 2004.

5. While there is no dispute that the building is used as a small or C4 HMO by at least three but not more than six residents, I will set out details for the record:

   - A building is an HMO under the s254 "standard test" if it consists of one or more units of living accommodation not consisting of self-contained flats, the living accommodation is occupied by persons who do not form a single household (or family) as their only or main residence, their occupation constitutes the only use of the accommodation and rent is payable for it, and two or more of the households share one or more basic amenities, being a toilet and personal washing and cooking facilities.

- Under Regulation 6(2) of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006, a building is not an HMO if the number of occupiers is two.
- The appeal building is laid out, following refurbishment in 2024, with a living room and kitchen/dining room on the ground floor, and two bedrooms plus one bathroom on each of the lower ground, first and second floors. Thus, there are bedrooms for up to six unrelated occupiers. While one bathroom is labelled as "en-suite", it is accessible to anyone in the house. All the occupiers therefore share toilets, personal washing and cooking facilities.

Matters of Lawfulness

6. This appeal is made to ascertain whether the existing use of 14 Hessle Avenue as a small or C4 HMO was lawful on the date of the LDC application.

7. Under section 191(2) of the TCPA90, uses are lawful at any time if no enforcement action may then be taken in respect of them, perhaps because they did not require planning permission or the time for taking enforcement action has expired[1]. The onus is on the appellant to make that case on the balance of probabilities. His evidence should be accepted if it is sufficiently precise and unambiguous, and there is nothing to contradict his version of events or make it less than probable.

8. The planning merits of the HMO use are not relevant to whether it is lawful. I could decide this appeal on the papers, and it was not necessary for me to visit the site.

9. The appellant submitted evidence with the appeal that was not before the Council when they decided to refuse to grant an LDC. I have taken account of the new as well as original evidence because the Council had an opportunity to comment on it during the appeal process, and because I must grant an LDC if the use is found to be lawful on the best facts and evidence available.

MAIN ISSUES

10. The main issues are whether the existing use of the property as a small HMO was lawful on 28 February 2025 because planning permission had been granted for the change to that use, or because the time for taking enforcement action had expired.

REASONS

Planning Permission

11. Under s57(1) and s55(1) of the TCPA90, planning permission is required for "development" including the making of any material change in the use of land or a building. It is undisputed that the appeal building was probably originally used as a single family dwellinghouse and that the change to use as a small or C4 HMO was probably a material one which required planning permission.

12. Since 1 October 2010, planning permission has been granted in England for a change of use from use as a single dwellinghouse (falling within use class C3) to use as a small or C4 HMO by means of a general development order. On 10 February 2012, however, an "Article 4 Direction" came into force so that such a change of use is not so permitted in an area including the appeal site.

[1] S191(2) also requires that the use does not constitute a contravention of any of the requirements of any enforcement notice in force, but the use has not been begun and is not subject to any notice.

13. What that means is, if the change from use as a single dwellinghouse to use as a small or C4 HMO took place between 1 October 2010 and 10 February 2012, it would have taken place with the benefit of planning permission. However, the appellant makes no claim to that effect, and he has submitted evidence purporting to show the HMO use taking place as early as March 2005. As set out below, Council Tax evidence dates the use back to July 2010.

14. On the balance of probabilities, a material change of use of the building to use as a small or C4 HMO was made at such a time that planning permission was required but not granted. It is therefore necessary to consider whether the time for taking enforcement action has expired.

Time for Taking Enforcement Action

15. Under s171B(3) of the TCPA90, where there has been a breach of planning control consisting of any material change of use, other than a change of use of a building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The “ten year rule” applies in this case because the building is used not as a single dwellinghouse but for multiple occupation.

16. The date of the breach of planning control is when the change of use to a small or C4 HMO took place without the requisite planning permission. At the latest, the change of use must have taken place by 28 February 2015, ten years before the LDC application. It does not matter if the change of use took place before then but, to have acquired lawfulness through immunity from enforcement action, the HMO use must have taken place without significant interruption for a ten year period, such that the Council could have taken enforcement action at any time.

17. Before I turn to the evidence of use, I note that the appellant has only owned the building since November 2023. Their case, however, is that the use began when or soon after the previous owner, who I refer to as NPSU, bought the property in April 2006. The building was usually let to three or four students at a time for fixed periods normally being 30 June to the following 1 July, such that the names changed each academic year.

Letting Agent Statements

18. The appellant has submitted photographs of account statements from a previous letting agent which purport to show rental payments made on various dates. The images are poor quality, but not illegible as the Council suggested. However, the information that I can glean from them does not assist the appellant.

- The statement dated 14 March 2005 predates NPSU’s ownership. It refers to rent received from three persons for that month, but only one person for the following April, May and June. It does not refer to 14 Hessle Avenue or otherwise specify which property the payments were made in respect of.
- The statement dated [unclear day of] October 2007 indicates that rent was received from one person for September, two for October and one for November, again in respect of an unspecified address.
- The statement dated 18 February 2010 lists payments from one tenant for January but four for February for an unspecified address.

- The statement dated 19 March 2011 shows that four tenants paid rent for that month for an unknown address.
- The statements dated 18 December 2012 and (unclear day in) February 2013 show that rent was received from four persons for those months in respect of 14 Hessle Avenue, alongside rental payments received for other buildings.

19. For the sake of argument, I take these statements on face value and set aside my concern that most do not expressly relate to the appeal building; if the photographs were taken of statements retrieved from some dusty historic file labelled '14 Hessle Avenue', then they probably are relevant.

20. However, if the first statement therefore shows that the use probably began in or before March 2005, when three persons paid rent, it must also suggest that the use did not take place in April, May and June of that year, or in autumn 2007 or in January 2010, when there were only one or two occupiers.

21. From the readable content of and gaps between the letting agent statements, they do not show the use taking place for any continuous period except, at best, the three month period from December 2012 to February 2013.

Council Tax Records

22. Council Tax records as of 5 July 2023 indicate that the appeal building was:

- Occupied by four persons, who benefited from the 'student exemption', for the four academic years rolling from 1 July 2010 to 30 June 2014.
- Unoccupied between 1 July and 20 October 2014 but then occupied by three persons, not students, for the rest of that academic year until 30 June 2015.
- Unoccupied from 1 July to 31 August 2015 but then occupied by three students for the remainder of that academic year until 30 June 2016.
- Occupied by four students for the next two academic years to 30 June 2018.
- Unoccupied for the entire year from 1 July 2018 until 12 July 2019.
- Occupied by four students for the next academic year until 30 June 2020.
- There were no Council Tax records pertaining to the number of occupiers from 1 July 2020 to 5 July 2023.

23. Given the inadequacies of the letting agent statements, I shall take the start of the Council Tax records, 1 July 2010, as the start of the ten year clock. The records show that the building was probably used as a small or C4 HMO from then except for a three month gap between October and July 2014, a two month gap from July to August 2015 and a one year gap from July 2018 to July 2019. I consider the significance of those interruptions below.

Assured Shorthold Tenancies (ASTs)

24. The appellant has submitted various AST agreements signed by tenants of the appeal building for annual fixed term periods starting with the 2014-2015 academic year. That there are no earlier ASTs does not alter the credible Council Tax evidence that the ten year clock can be taken from 1 July 2010.

25. The 2014-2015 AST differs from the Council Tax records in that, although it was dated 13 October 2014, the tenancy term was described as a fixed for a period of five months from 1 February to 30 June 2015. The agreement was also only signed in February 2015. In other words, it indicates that there may have been a gap in occupation of seven rather than three months from 30 June 2014.

26. Like the Council Tax records, the 2015-16 AST shows the tenancy beginning in September 2015. The 2017-18 AST was signed by four tenants for the full academic year. However, the 2018-19 AST was only signed by two tenants, and it was later cancelled as discussed below, consistent with the building not being occupied as an HMO then for Council Tax purposes.

27. There are ASTs for the academic years 2020-21, 2021-22, 2022-23 and 2024-25, but not 2023-24 as discussed below.

The Sworn Statements, Submissions and Invoices

28. NPSU made two signed statements in front of a solicitor: on 7 November 2023, just before their sale of the property to the appellant was completed, and on 14 October 2025 to support this appeal. I attach significant weight to both statements as sworn evidence, but neither contains much detail.

29. NPSU said in both statements that, after they acquired the property in April 2006, it was let only as an HMO to three or more unrelated individuals. Taking that claim with the letting agent statements, the evidence is still insufficiently precise to show any probable period of continuous use before 1 July 2010. Indeed, NPSU admitted in their first statement to only having evidence of occupation from 2015.

30. NPSU's second statement notes that the building was "unoccupied between tenancies" for a few months in summer 2014 and summer 2015. However, they do not acknowledge that the relevant AST suggests the 2014 gap extended to February 2015 and they do not say whether the small or C4 HMO use was at least being furthered during that time by, say, any active marketing.

31. NPSU does explain why the Council Tax record showed no occupation for the whole academic year of 2018-19. They say that the property was to be let to four students but two of them withdrew. NPSU "chose not to continue with the tenancy for the two remaining tenants" as they "wanted to retain the established C4 HMO use with a minimum of three tenants".

32. That claim was endorsed by the letting agents and I am told that NPSU then left the property vacant while paying due Council Tax themselves. However, those facts do not diminish the significance of a year-long interruption to the use or show that the Council could have taken enforcement action against it during that time.

33. NPSU explained that the building was also vacant from July to November 2023 while the sale to the appellant proceeded. The appellant carried out refurbishment works, as shown by various invoices, between December 2023 and March or April 2024. I accept that the building was put to no other use at that time and it was refurbished with the purpose of furthering the small or C4 HMO use.

Conclusion on the Time for Taking Enforcement Action

34. I find that, while the change of use to a small or C4 HMO may have been made earlier, the evidence is not sufficiently precise or unambiguous to show that it

probably took place without significant interruption prior to 1 July 2010 when Council Tax records of multiple occupation began. The ten year clock starts then.

35. After 1 July 2010, the use probably took place for four years until it was interrupted for three to seven months in 2014. Council Tax records suggest that the building was not multiply occupied between July and October 2014 (and then was not occupied by students). NPSU gives the same dates, but the AST was not signed until February 2015.

36. That discrepancy is not properly explained, and the same is true of the interruption to the use for some two months in 2015. It may nonetheless be the case that both breaks arose through normal gaps between different sets of (mostly) student tenants over two summer vacations. However, the same could not be said for the interruption between July 2018 and July 2019.

37. I understand the circumstances in which NPSU cancelled the 2018-19 AST but that is not enough to explain why there was a 12 month period of non-use, or to even make it probable that the building was vacant, and either way to make that period insignificant. The appellant has not shown that, had the Council attempted to take enforcement action during that academic year, they would have found any sign of a (paused) HMO use. And this is important because the use was not "established" by July 2018 as NPSU hoped. Even if I discount the previous interruptions to the use, less than ten years elapsed between July 2010 and 2018.

38. There were also less than ten years between the resumption of the use in July 2019 and the date of the LDC application, and so it makes no difference that the interruption to the use between July 2023 and April 2024 is explained by the property sale and refurbishment.

Overall Conclusion

39. While the Council has no opposing evidence, that submitted by the appellant is not sufficiently precise or unambiguous to make his case. I find that, on the balance of probabilities, the change of use of the building to a small or C4 HMO took place when planning permission was required but not granted, and the use did not take place without significant interruption for any ten year period. By the date of the LDC application, enforcement action could probably have been taken in respect of the use because the time for taking enforcement action against it had not expired.

40. I conclude that the Council's decision to refuse to grant an LDC in respect of the existing use of 14 Hessle Avenue, Hyde Park, LEEDS, LS6 1EF as a small House in Multiple Occupation by not more than six residents, being a use falling within use class C4 as set out in Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 was well-founded. I will exercise the powers transferred to me under s195(3) of the Town and Country Planning Act 1990 to dismiss the appeal.

Jean Russell

INSPECTOR