



Appeal Decision

No Site Visit

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 September 2026

Appeal Ref: APP/Z4310/X/25/3374566

30 Balmoral Road, Fairfield, Liverpool L6 8NF

- 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 GAC Estates Ltd against the decision of Liverpool City Council.
- The application ref 25LE/1886, dated 14 July 2025, was refused by notice dated 19 September 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 large House of Multiple Occupation (Sui Generis).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I am satisfied that a site visit is not necessary to enable me to determine the appeal. Both parties have confirmed that the appeal can be determined without the need for a site visit.
3. I have used the description given in the application form in the banner heading above. The appellant also uses the term 'seven room HMO' in its application form and refers to the application as for a 7 Bed House in Multiple Occupation in their letter to the Council. Within its appeal form, the appellant describes the use as 'existing use as Large HMO (Sui Generis).' In their appeal submission, the appellant refers to a 7 bed/person HMO. It is clear from the appellant's evidence that they are seeking determination that the use of the premises as a large HMO is lawful because it has been occupied by at least 7 persons and I shall consider the appeal on that basis.

Main Issue

4. The main issue is whether the Council's refusal to grant a lawful development certificate (LDC) is well-founded.

Reasons

5. Section 191(1)(a) of the Town and Country Planning Act 1990 (as amended)(the Act) provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason);

- and ii) They do not constitute a contravention of any enforcement notice then in force.
6. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the development would have been lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
 7. Section 171B of the Act sets out that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. For the appeal to succeed the appellant will need to show, on the balance of probabilities, that the material change of use occurred on or before 14 July 2015¹ and, if so, that it continued without significant interruption for at least 10 years thereafter.
 8. In *Impey v Secretary of State for the Environment* [1980] 47 P&CR 157, it was held that change of use to residential development can take place before the premises are used in the ordinary and accepted sense of the word. How much earlier there can be a change of use will be a question of fact and degree. It is suggested, with reference to *Impey* and other cases and appeal decisions (though none in particular have been drawn to my attention) that there does not have to be actual occupancy to demonstrate implementation of a use and that the evidence needs to be considered in the round.
 9. It is unclear from the evidence, however, when the material change of use actually took place. Within its application form, for example, the appellant states that the use or activity was begun on 13 March 2014, whereas within their Appeal Statement, the appellant states that 'records indicate that the property has be [sic] in use as a large House of Multiple Occupation since at least 2011.'
 10. While both dates are before 14 July 2015, such contradiction introduces ambiguity and reduces confidence in the accuracy of the appellant's account. Moreover, a lawful use must be 'affirmatively established'. A use can only become lawful if it continues throughout the ten² year period, to the extent that the Local Planning Authority could have taken enforcement action at any time. Whether any break in occupation, for example for redecoration/renovation or changeover between tenants/occupiers, resulted in an interruption in continuous use will be a matter of fact and degree.
 11. The appellant states that it was offered the opportunity to purchase the property and the adjoining No. 32 Balmoral Road in November 2023. It states that, upon purchase of it, investigations revealed that it was in a major state of disrepair. Within the application form, the appellant also makes reference to recent renovation works to ensure the safety of the property.
 12. It is stated that during the investigations, the application site was still tenanted, however, alternative accommodation has since been found for the most recent tenants, as major renovation and remedial works were required to the property. It

¹ Namely 10 years prior to the issue of the enforcement notice.

² The relevant immunity period

is not clear from the evidence when the renovation and remedial works were carried out, or when tenants moved out. Given the appellant states within its application form that the use was begun on 13 March 2014, it is not clear whether this would have resulted in an interruption in continuous use.

13. I have been provided with various adverts/literature regarding the sale of the appeal property. A Sutton Kersh advert, for example, describes the property as a 7 bedroomed HMO investment opportunity. An 'On the Market' document describes the property (along with No 32) as 'A Pair of Semi Detached Buildings Comprising a Sixteen Bedroom HMO Part Let...' (for sale by Online Public Auction 3rd August 2022).
14. An advert, saved as 'Auction December 2016 – Withdrawn' describes the Lot, 30/32 Balmoral Road, as 'a 15 Bed HMO Investment Opportunity...'. Within its Officer Report, the Council advise that, in the 'Full Description', the application site is described as containing 3 Letting Rooms at Ground Floor level, 2 Letting Rooms, Utility Room and Office Room at First Floor level, and 1 Letting Room and Store Room at Second Floor level, giving a total of 6 letting rooms. The Council suggests this indicates that the application site was operating as a C4 HMO in late 2016.
15. Within correspondence with the Council, the appellant's agent posits that this may have been an error and queries whether the HMO licensing information would be definitive evidence that overrides the 2016 advertisement. An email, dated 29 April 2025 from a Senior Enforcement Officer, states the earliest HMO licence was granted to the previous licence holder on 28 December 2011. In response to an FOI request, the Council advised that it holds information relating to HMO licences for the property for 9 persons (for years 2011 to 2024) and 7 persons between 6 April 2023 and 5 April 2024. However, an HMO license simply shows that the property was (at that time) found by the Council to be suitable for the number of occupants stated, not that it was actually occupied by the number stated. While this points towards an intention to use the property as a large HMO, it is not evidence of actual occupation during that period.
16. I have been provided with floor plans for the property which show a hallway, two bedrooms and a kitchen with laundry room on the ground floor, a hallway, three bedrooms and two bathrooms on the first floor and a hallway, two bedrooms and attic/loft storage on the second floor. A basement is also shown as 'unfinished basement'. Photographs of the outside of the building have also been provided, though these do little to assist in understanding how the premises has been used over time.
17. Energy Performance Certificates (EPCs), dated 11 April 2014 (date of assessment given as 13 March 2014):
 - Flat 1: Top-floor flat – 20sqm
 - Flat 2: Top-floor flat – 20sqm
 - Flat 4: Mid-floor flat – 18sqm
 - Flat 5: Mid-floor flat – 18sqm
 - Flat 7: Ground-floor flat – 27sqm

- Flat 8: Ground-floor flat – 19sqm
 - Flat 9: Ground-floor flat – 21sqm
18. Although the EPCs support the appellant's claim that the property has previously been subdivided in some way, they do not show that the various rooms were occupied. Furthermore, it seems from the evidence, that the internal layout of the premises has changed over time. While this, of itself, is not fatal to the appeal succeeding, it adds to the ambiguity. It is not clear, for example, what the implications of any internal changes were in terms of occupation.
 19. Within a document entitled 'Auction Special Conditions' tenancies are identified for flats 1, 2, 5, 6, 7, 8 and 9, with Assured Shorthold Tenancy Agreements (ASTs) stated to have been made between November 2020 and September 2022. The tenancy agreements provided appear broadly consistent with the details provided on the 'Auction Special Conditions' document, with the exception of Room 8, which refers to an AST dated 13 September 2022 made between the Seller and a named individual, whereas the AST provided is with a different named individual, dated 26 July 2022, with signatures dated 26 July 2023 and a term of 6 months between 26 July 2023 and 25 January 2024.
 20. Hand written amendments also appear to have been made to the AST for 'Flat 7', changing the address from 32 Balmoral Road, to 30 Balmoral Road. The term of the tenancy also appears to be incorrect, as it states that it commences on 23 November 2020 and ends on 23 May 2020. While these may be legitimate mistakes/corrections, they undermine the accuracy of the documentation provided. Furthermore, the tenancy agreements cover a limited period of time and do not show who occupied the premises prior to November 2020.
 21. The Council refers to the electoral register, which records one resident at the premises in March 2021, a point made by the Council and a Ward Councillor³. While electoral registry information represents a snapshot in time, only one of the tenancy agreements provided covers March 2021, with all other ASTs commencing after March 2021. I have been provided with no first hand evidence of occupation during that period.
 22. A letter, dated 14 May 2025 and entitled 'sworn declaration' by a local resident states that, to the best of their knowledge, the properties (30 and 32 Balmoral Road) were being used as large HMO's for more than 10 years from the 14 May 2025 and that to the best of their knowledge, tenancies have been uninterrupted. Although the letter is signed and purports to be a sworn declaration, an oath sworn by the person making it does not appear to have been made.
 23. Furthermore, while the address of the individual is given as 36 Balmoral Road, it is not clear what the author of the letter understands by the term 'large HMO' or the extent of their knowledge of each property was over the years and whether they entered the appeal property or simply based their assumption on comings and goings to the property, which may not reflect actual occupation. I therefore afford this declaration very limited weight.
 24. It is clear that the appellant purchased the property on the assumption that it is a 7 bedroom HMO and that the limited evidence provided is likely to reflect the fact

³ Consultation responses detailed within the Council's Officer Report.

that the appellant did not purchase the property until 2023. However, this does not alter the fact that in an LDC the burden of proof is very much on the applicant. The appellant's evidence is limited and contradictory, with different dates given as to when the material change of use took place.

25. The evidence points towards the layout and occupation of the property having changed over time and undergoing renovation works. It is not clear from the evidence, what the implications of such changes/works are in terms of occupation of the premises, or whether it resulted in an interruption in the use, such that the local planning authority could not have taken enforcement action throughout a ten year period. Moreover, the evidence regarding occupation is limited and does not show that the use continued throughout the relevant immunity period, to the extent that the Local Planning Authority could have taken enforcement action at any time.
26. Thus, I find the appellant's evidence is not sufficiently precise and unambiguous and does not show, on the balance of probabilities that the use of the property as a large House in Multiple Occupation (Sui Generis) occurred on or before 14 July 2015 and continued without significant interruption for at least 10 years thereafter. Consequently, the appeal must fail.

Conclusion

27. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a Large House of Multiple Occupation (Sui Generis) 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).

M Savage

INSPECTOR