



Appeal Decision

No Site Visit

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2026

Appeal Ref: APP/Z4310/X/25/3376770

13 Warbreck Road, Liverpool, Merseyside L9 8EE

- 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 Elite Properties Liverpool Limited against the decision of Liverpool City Council.
 - The application ref 25LE/0902, dated 28 March 2025, was refused by notice dated 29 April 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 as a 7-bedroom House in Multiple Occupation (HMO) use class Sui Generis.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Given the matters in dispute, 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.

Main Issue

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

Reasons

4. 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.
5. 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(3) 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. The main thrust of the appellant's case is that the appeal property has been used as a 7 bedroom (7 person) HMO for more than 10 years. The appellant states that the local planning authority did not issue an enforcement notice during the relevant period, a matter which is not disputed.
8. The appellant has set out what it considers to be well-established case law¹ in support of its case and has drawn my attention to the case of *SSCLG & Anor v Welwyn Hatfield Borough Council* [2011] UKSC 15, which concerned a building which had been constructed as a dwelling and, after a limited period, the owner of the property moved in. The Court had to decide whether the four year time limit for taking enforcement action in section 171B(2) was applicable, or the 10 year rule provided in section 173B(3). Neither party disputes that the 10 year period is the applicable period, nor is there any suggestion of deception.
9. As established in *Swale BC v First Secretary of State* [2005] EWCA Civ 1568, a lawful use must be 'affirmatively established'. To succeed in this regard, it is not necessary for the appellant to provide daily proof of occupation over the entire 10 year period. What the appellant will need to show, on the balance of probabilities, is that the material change of use occurred on or before 28 March 2015² and, if so, that it continued without significant interruption for at least 10 years thereafter.
10. In its decision letter, the Council states that '*None of the evidence provided irrefutably prove that the property had been occupied continuously by at least 7 unrelated individuals from 28th March 2015 till 28th March 2025.*' That is not the test. The test is whether the **use** continued throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time. Use is not the same thing as occupation, however, significant periods of non-occupation, are likely to be an important consideration and may result in the immunity clock starting again.
11. The use of the term 'irrefutably' by the Council raises doubt as to whether it has applied the correct standard, the civil standard, which is the 'balance of probabilities' (though I note reference to the 'balance of probability' is made in the officer report). Notwithstanding this, my consideration under this appeal is whether the local planning authority's refusal is well-founded, not its reasons for the decision.
12. On its application form, the appellant states that the use began on 31 July 2013. Within a letter to the Council, the appellant states that the use has been uninterrupted for over 10 years, and that the property was already in operation as an HMO before its ownership. The appellant asserts that the authority's evidence does not contradict its case.
13. A number of licenses have been granted in respect of the appeal site, including a licence granted on 1 August 2013, which states that the Authority has decided that the property is reasonably suitable for occupation by not more than Seven people.

¹ *Basingstoke and Dean Borough Council v SSCLG* [2009] EWHC 1012 Admin, *Welwyn Hatfield Borough Council v SoS* [2011] UKSC 15, *Murphy v Secretary of State* [2014] EWHC 3097 Admin, *Swale Borough Council v Secretary of State* [2011] EWHC 1270

² Namely 10 years prior to the issue of the enforcement notice.

Further licenses have been granted on 25 February 2015, 25 April 2018 and 14 November 2018 (which came into force on 14 November 2018 and is stated to remain in effect for a period of 5 years) and 28 March 2024. Although these licenses indicate an intention to operate the appeal site as a 7 person HMO, they do not demonstrate occupancy.

14. Council Tax documents have been provided, which identify the premises as 'Bedsits at 13 Warbreck Road'. Although the banding is consistent with the appellant's claim that the property has been occupied by multiple occupants, the documents do not specify how many individuals occupied the property and so they do little to assist in understanding how the property has been used over time.
15. Various invoices, receipts³ and bills have been provided in support of the appeal. While many of the documents provided clearly relate to the appeal property (indeed, some relate to particular rooms within the premises) and support the appellant's case that the property has been rented out to multiple occupants, they do not show how many individuals occupied the property at any one time.
16. Electricity, water and broadband bills, for example, show that the appellant was responsible for bills at the appeal property, which is consistent with tenancy agreements provided. However, the bills are addressed to a company or an individual (not suggested to be in occupation), rather than an individual occupying the premises. As a consequence, they do not help to understand who occupied the premises, when.
17. Various receipts for advertising have been provided, for example, 6 May 2021, Room 6 OpenRent⁴, and set up fee receipts from Concentric Lettings, for example, Room 1 and 5, dated August 2014, Room 6, dated 28 July 2015, Room 4, dated August 2015, Room 6, dated 23 May 2016, Room 4, dated 22 February 2017. These documents support the claim that the premises has been rented out to multiple occupants and point towards there being turnover in terms of occupancy.
18. I have been provided with a number of Tenancy Agreements (ASTs) for the property. The AST for Room 3, is for 12 months, commencing 22 March 2013 and expiring 21 March 2014 for an individual, whom I shall refer to as JM. A witness statement signed by JM states that during their tenancy, they have occupied Room 3 within the property. It is also stated that at any given time, they were aware of at least 6 other individuals living in separate rooms within the property.
19. The AST for Room 5, is for 6 months, commencing 6 August 2013 and expiring 5 February 2014 for an individual, whom I shall refer to as JB. A witness statement signed by JB confirms that during their tenancy, they have occupied rooms 2 and 5 within the property at different times. As with the declaration provided by JM, JB states they were aware of at least 6 other individuals living in separate rooms within the property at any given time. However, it is not clear when JB moved rooms, or what the implications were in terms of the overall number of individuals occupying the property when they moved.
20. Rent and arrears statements provided by the appellant include the comment 'moved out – HB still being paid' in relation to JB over a number of months in 2014 and 2015. They also include a number of months when only 6 (or less) different

³ For gardening, repairs, maintenance and purchase of items

⁴ Receipts for a number of other rooms are also provided.

names are identified, suggesting that the premises was not occupied by 7 individuals at that time. This is inconsistent with the suggestion by JM and JB that there were at least 6 other individuals living in separate rooms within the property at any given time.

21. Furthermore, within the document '08-03 2013-03-18 TT Comms to 29 Oct 2020', one of the entries relating to JB states that an abandonment notice was issued, suggesting that JB was not occupying the premises at that time. An entry, dated 14 January 2020, also refers to JB being away from the house, as well as having left the property for six months and staying with a friend. Six months is a significant period of time. Although JB may have had the right to occupy the premises from 6 August 2013 to present, it seems unlikely, from the evidence, that they actually did occupy the premises continuously during this period.
22. A Valuation Report, dated 24 November 2022, describes the property as a 7 bedroom HMO. A list of tenants is included within the report, showing a name next to each room, including dates each tenancy started. In relation to JB and JM, the dates given are 6 August 2013 and 22 March 2013 respectively. Others range from 2019 to 2022. JB is identified as occupying Room 2 from 6 August 2013, whereas the tenancy agreement dated 6 August 2013 relates to Room 5.
23. A number of other tenancy agreements have been provided for rooms 1, 4, 6 and 7. The tenancy agreements provided do not cover the entire 10 year period, nor is it clear whether the individuals identified within the ASTs stayed beyond the period identified within the ASTs provided. Given the difference between some of the names identified in the ASTs and the names identified in the Valuation Report and other documentary evidence referred to above, it seems that changes in occupancy have occurred.
24. A statutory declaration, made by a Chartered Accountant whose firm has acted on behalf of the appellant, confirms that since the acquisition of the Property in 2013, it has been operated as a seven-bedroom House in Multiple Occupation, with each of the seven rooms let individually to separate tenants. The individual confirms that rental income has been received from each of the seven individual rooms at the Property continuously since approximately August 2013 to the present date (26 March 2026).
25. The individual goes on to state that rental income from the seven rooms has been received continuously, subject only to the normal short void periods that occur between individual tenancies when rooms change occupants. However, it is not clear what is meant by 'normal short void periods'. Furthermore, this contradicts the evidence given by JM and JB, which is that they were aware of at least 6 other individuals living in separate rooms within the Property at any given time. As indicated above, it seems rent may have been paid for JB, even when they were living elsewhere.
26. Google Street View photographs show the appeal property in June 2014 (2 cars parked in the driveway), August 2017, March 2021 and October 2022. Dated photographs of a number of the bedrooms have also been provided, ranging from 2011 to 2022. The photographs generally show the rooms with no obvious personal effects (such as photographs or other personal items). This, in my experience, is very unusual in an HMO where rooms are occupied. Although most of the beds are made up, this suggests that, at the time each photograph was

taken, the respective room was unoccupied. However, if that is the case, it is not clear how long they were unoccupied for. The photographs do little to assist in understanding how the property has been used over time.

27. The appellant has drawn my attention to a number of appeals. Appeal reference APP/Z4310/X/25/3373790 concerned a C4 HMO. That appeal turned on whether the material change of use occurred prior to an Article 4 Direction coming into effect and if so, whether that use was subsequently lost through abandonment or a material change of use. It is therefore not comparable to the appeal before me.
28. In respect of appeal reference APP/Z4310/X/25/3373943, which concerned a *sui generis* HMO, the Inspector concluded, on the balance of probabilities, that the use was lawful. While I do not have full details of this case before me, the case will have turned on its own facts. The Inspector does not suggest in their decision letter, that the appellant's evidence is contradictory or ambiguous and so it seems unlikely to be comparable to the appeal before me.
29. From the evidence provided, it is clear that in relation to the majority of rooms, the tenant has changed between 2013 and the date of the LDC application. It is not unusual for there to be some sort of time period between one tenant moving out and another moving in, whether to allow for the accommodation to be prepared for the next tenant, because of the circumstances of the incoming tenant, or simply because it has taken time to find a suitable tenant.
30. However, it is not clear from the evidence what the implication of tenancy changes has been in terms of occupancy and whether any such void periods were sufficient to result in an interruption in terms of continuous use. While the premises may have been used to accommodate multiple occupants since 2013, the appellant is seeking an LDC for a *sui generis* HMO, on the basis that it has been occupied by 7 individuals. An interruption in the ten year period can take the form of a change to the character of the use.
31. Although a significant volume of evidence has been provided by the appellant in support of the appeal, as set out above, evidence of the level of actual occupancy is unclear and contradictory. This matters because, while the premises may not have been used as a C3 dwelling house for more than 10 years, there may well be a material difference between a premises occupied by 4 or 5 individuals and a premises occupied by 7.
32. It is not clear from the evidence provided, that changes in occupation did not result in a change in the character of the use, or that there was no significant interruption in the use of the premises as a 7 person HMO.
33. Thus, for the reasons set out above, I find the appellant's evidence to be imprecise and ambiguous, such that it does not show, on the balance of probabilities, that the use of the property was immune from enforcement action at the date of the application.

Conclusion

34. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a 7-bedroom House in Multiple Occupation (HMO) use class *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