



Appeal Decision

Site visit made on 7 October 2026

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 15th October 2026

APP/Z4310/X/25/3376958

70 Queens Drive, Liverpool L18 2DY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by Liverpool City Council to grant a certificate of lawful use or development.
- The appeal was made by Mr Patrick Cosgrove for Wildegrove Property Limited.
- The application dated 20 August 2025 and validated on 22 August 2025 under Council reference 25LE/2238. It was refused by a notice issued on 21 October 2025.
- The Application for a Certificate of Existing Lawful Development, (LDC), for a 7 bed House of Multiple Occupation, (HMO), was made under section 191(1)(a) of the Act in respect of the property at No. 70 Queens Drive, Mossley Hill, Liverpool L18 2DY.

Summary of decision: The appeal fails. A certificate of lawfulness is not issued.

Appeal property and application

1. The appeal property, No. 70 Queens Drive, is a large semi-detached 2 storey house in the Mossley Hill area of Liverpool.
2. The Application by Wildegrove Property Limited was for a Certificate of Existing Lawful Development, (LDC), for use of the property as a 7 bed House of Multiple Occupation, (HMO). The Applicants said the property had been operated as a large HMO since at least 30 June 2014, providing 7 bedrooms with shared facilities, let primarily to students and young professionals.
3. Liverpool City Council refused to issue an LDC because: "The local planning authority, based on the evidence provided to the Council, is not satisfied that the use was subsisting during the 10 year period prior to submission from the 22nd August 2015."

Background

4. S.191(1) of the Act provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; they may make an application for the purpose to the Local Planning Authority. Where that application is refused or deemed to have been refused and an appeal made, the burden of proof to show that the decision was not well founded lies with the appellant.
5. S.254 of the Housing Act 2004 sets out the meaning of "house in multiple occupation". A house in multiple occupation has at least 3 tenants living in it, forming more than 1 household, sharing a toilet, bathroom or kitchen facilities with other tenants.
6. The Town and Country Planning (Use Classes) Order 1987 as amended puts land and buildings in England into various categories according to their type and purpose.

They are known as 'Use Classes'. A 'Change of use' can occur within the same Use Class or from one Use Class to another. A sui generis use is not in a Use Class. It is, by definition, a use of its own kind.

7. A house in multiple occupation, (HMO), is where both of the following apply: at least 3 tenants live there, forming more than 1 household and toilet, bathroom or kitchen facilities are shared with other tenants. A large HMO is where both of the following apply: at least 5 tenants live there, forming more than 1 household and toilets, bathroom or kitchen facilities are shared with other tenants. The appeal property at No. 70 Queens Drive is a large 7 bed sui generis HMO.

Use of No. 70 Queens Drive

8. The Applicants said the dwelling at No. 70 Queens Drive was home to the O'Keeffe family from 1973. From 30 June 2014, Matthew O'Keeffe let the property to 7 individuals on an Assured Shorthold Tenancy (AST) agreement for a period of 12 Months. The tenants continued to occupy the property on a statutory periodic tenancy, (*statutory periodic tenancy - when a fixed-term AST ends and the tenant keeps living at the property without signing a new contract*), following the end of the agreement. They remained tenants until 31 July 2016.
9. From 1 August 2016, the property was let to 7 individuals on an AST agreement for 11 months. They continued to occupy the property on a statutory periodic tenancy following the end of the agreement. They remained tenants until 30 June 2018.
10. From 1 July 2018 the property was let to 7 individuals on an AST agreement for a period of 12 Months. The tenants continued to occupy the property on a statutory periodic tenancy following the end of the agreement. They were tenants until 30 June 2021.
11. From 1 July 2021, the property was let to 7 individuals on an AST agreement for 12 months. The tenants continued to occupy on a statutory periodic tenancy following the end of the agreement. They remained tenants until 30 June 2022. A period of necessary maintenance was undertaken whilst the property was vacant between 1 July 2022 and 14 September 2022.
12. From 15 September 2022 the property was again let to 7 individuals on an AST agreement for 12 Months. The tenants stayed until 30 October 2024. The tenants had to move out due to essential remedial works to be undertaken also because of the sale of the property as part of a probate process. The property had remained unoccupied since 30 October 2024 due to essential remedial damp and structural works needing to be carried out to ensure the property was fit for habitation, again, including sale of the property. It was claimed that break did not constitute a change in use or abandonment of the use of the building as a large HMO.
13. Following sale of No. 70 to the Applicants, Wildegrove Property Limited, the property was currently undergoing a full scheme of refurbishment. On completion of the works, the intention was that the property would continue in use as a 7 bedroom HMO.

Considerations

14. The application for an LDC was dated 20 August 2025. The Council said the application was validated on 22 August. The Council's reason for refusal to issue an LDC referred to the need to show the use was subsisting during the 10 year period prior to submission from the 22 August 2015. What the Applicants needed to show was that No. 70 Queens Drive had been in continuous use as a 7 bed sui generis HMO from 22 August 2015 to 22 August 2025 without significant interruption.

15. S.171B(3) of the Act says that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The case of *Thurrock BC v SSETR & Holding* [2002], sets out that a use can only become lawful if it continues throughout the relevant immunity period, such that the planning authority could have taken enforcement action at any time. Nevertheless, a judgement has to be made on whether a break in the ongoing breach is *de minimis* or significant to the point where the breach is considered to have ceased.
16. In the present case, the Applicants' submitted evidence of Assured Shorthold Tenancy agreements, (ASTs), for the relevant period, claimed to show continuous occupation throughout. ASTs were in most case extended by one to 2 years. Not every intervening year was represented by a fresh contract. The Housing Act 1988 provides that upon expiry of a fixed-term assured shorthold tenancy, the tenancy continues automatically on a statutory periodic basis unless formally terminated. Occupation under the 2014, 2016, 2018, 2021, and 2022 tenancies could reasonably be inferred as having been continuous, with no intervening cessation of the HMO use.
17. The Applicants noted the Council had issued successive HMO licences for No. 70 from 26 July 2016 to the present day. Each licence named the premises as a 7 bedroom HMO. The licences had been renewed. Those details showed intervening years without new contracts were irrelevant. Occupation during the period August 2015 to July 2016, prior to the HMO licences was confirmed by the submitted ASTs.
18. The Applicants said No. 70 was vacant between 1 and 14 September 2022 for maintenance, said to ensure the property was fit for letting to the next tenants. In my view, that unoccupied period was not significant, it being brief and was for a reasonable need associated with the ongoing HMO use. The next gap, acknowledged by the Applicants, is more problematical. The property had been let to 7 individuals from 15 September 2022 on an Assured Shorthold Tenancy (AST) agreement for a period of 12 Months. The tenants continued to occupy the property on a statutory periodic tenancy following the end of the agreement until 30 October 2024. They had to move out due to essential remedial works needing to be undertaken and allow for the sale of the property as part of the probate process.
19. Whilst the Applicants said that non occupancy since 30 October 2024 did not constitute a change in use or abandonment of the use of the building as a 7 bed HMO, the house at No. 70 was unoccupied for some 9 months to 22 August 2025, during which time the Council could not have taken enforcement action against an ongoing unlawful HMO use.
20. The Council's evidence was that the property remains vacant. If that is correct, No. 70 has been vacant for some 2 years. That is outside the LDC time interval under consideration here, as was the Applicants' claim that the property was already in a lawful 7 person HMO use in 2014. If indeed No. 70 was in a lawful 7 person HMO use in 2014, the dwelling could be unoccupied for sometimes lengthy periods of time without losing that lawfulness, (*Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461, also *Ocado*). However, that is not a question before me. It is the claimed continuous use of No. 70 in the period of 22 August 2015 to 22 August 2025. The accepted occupancy gap from 30 October 2024 is, in my view, too lengthy a period of non HMO use from 30 October 2024 onwards to demonstrate a full 10 year period of an unlawful use for it to have become lawful.

Conclusion

21. The appeal fails. A Certificate of Lawfulness is not issued.

FORMAL DECISION

22. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development on the application made for the existing use as a House in Multiple Occupation for a 7 bed House of Multiple Occupation, (HMO), made under section 191(1)(a) of the Act in respect of the property at No. 70 Queens Drive, Liverpool L18 2DY was well founded and that the appeal should not succeed. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

John Whalley

INSPECTOR