

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/26/3377237

10 Edge Lane, Liverpool L7 1QX

- 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, (LDC).
- The appeal was made by Tuseef Chaudhary for Namit Investments Ltd.
- The application was dated 17 June 2025 and validated on 16 July 2025 under reference 25LE/1908. It was refused by a notice issued on 10 September 2025.
- The Application for a Certificate of Existing Lawful Development was for a 9 Bed House in Multiple Occupation (HMO) - Sui Generis.
- The reason to refuse the application was: "The local planning authority, based on the evidence provided to the Council, is not satisfied that the use was subsisting during the period of ten (10) years ending with the date of the application."

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

Appeal property and application

1. The appeal property, No. 10 Edge Lane, Liverpool is a 3 storey house at the eastern end of a short terrace of similar properties. It is a Grade II Listed Building within the Edge Hill Conservation Area.
2. The application by Namit Investments Ltd was for a Certificate of Lawful Existing Use or Development to confirm the lawful use of No. 10 Edge Lane as a 9-bed Sui Generis large HMO.
3. The Appellants said it was understood that the evidence must cover a 10 year period back from the date of submission, demonstrating the use a 9-bed Sui Generis Use Class HMO had been in place since 16 July 2015.

Background

4. S.171B of the Act, Time limits says, at (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Sections (1) and (2) refer to breaches of planning control other than in the present case. S.171B(3) therefore applies.
5. 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.
6. S.254 of the Housing Act 2004 sets out the meaning of "house in multiple occupation". A house in multiple occupation, (HMO), has at least 3 tenants living in it

there, forming more than 1 household, sharing a toilet, bathroom or kitchen facilities with other tenants.

7. 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.

Considerations

8. In my view, the Applicants needed to show the property at No. 10 Edge Lane, Liverpool had been occupied continuously by 9 persons, the property being used as a house in multiple occupation for a period of 10 years up to the date of the application for a certificate of lawfulness to Liverpool City Council, (3.2, 3.3, Applicants statement).
9. In considering an application for an LDC, the onus is on an applicant to make out their case to the standard of the 'balance of probabilities'. Their 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. The case of *Gabbitts v SSE & Newham LBC* [1985] JPL 630 is authority for that position. It is not for an Inspector to seek out evidence or draw an inference from gaps in evidence - *Ravensdale Limited v SSCLG* [2016] EWHC 2374 (Admin).
10. Whilst the Applicants were unable to provide proof of rent payment for the tenants occupying the property for the gap between 1 July 2015, (sic - 2015 assumed,) and 30 June 2016, they confirmed they purchased the property with the understanding such use had started in July 2015, in line with the tenancy agreement provided.
11. It was accepted there had been under occupation of the property between July 2019 and June 2020, as well as the number of tenants varying between nil and 10 between July 2020 and February 2025, with the exception of November/ December 2021 and February, June, July and September 2022, and January, June and July 2023 when the property was fully occupied. Those periods of under occupation of the property had been due to difficulties finding tenants to occupy the property. However, it was claimed that during those times, no material change of use of No. 10 occurred. The use remained as a 9-bed Sui Generis Use Class HMO.
12. A certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters fall within a use class. In all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. This is particularly important for uses which do not fall within any "use class"; (Paragraph: 010 Reference ID: 17c-010-20140306). Differences as to whether changes in the number of occupants of No. 10 over the years are minor considerations compared with the need to show, not just that the unlawful use, (a change in the presumed original lawful use of No. 10 as a family dwelling to an unlawful HMO use), took place at least 10 years before the application was made, but that it continued thereafter to the extent that the Council could have taken enforcement action at any time in that period. The case of *Thurrock BC v SSETR & Holding* (COA 27.2.02, J 1080) is authority for that position.
13. With an existing lawful residential use, a 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). But in the case of an ongoing unlawful use, if the use ceased during that period, the time up to that point would not count towards immunity. The “clock” would restart if and when the unlawful use recommenced.

14. The extent of the continuity of the use here depends upon the occupancy level and the duration. Requiring evidence to show occupancy of No. 10 by 9 persons at all times in the 10 year period would be unduly exacting. Gaps, particularly by students at holiday times might not disqualify, nor, in my view, some would occasional but insignificant occupation, by, say 8 rather than 9 persons. However, in this case, the gaps were more consequential. The fair acceptance by the Applicants that there had been under occupation of the property between July 2019 and June 2020, and the occupation by between nil and 10 between July 2020 and February 2025, were significant, amounting, in my view, to a determining break in the necessary continuity of the unlawful use. That is, even accepting the stated periods of full occupancy around 2021, 2022, and 2023.

Conclusion

15. The appeal fails.

FORMAL DECISION

16. 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 9 Bed House in Multiple Occupation (HMO) - Sui Generis made under section 191(1)(a) of the Act in respect of the property at No. 10 Edge Lane, Liverpool L7 1QX 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