

DELEGATED REPORT

Application No:	P/25/0338
Site Address:	68 - 70 Brecon Road Merthyr Tydfil CF47 8NN
Development:	Use of the property as a House in Multiple Occupancy (HMO)
Case Officer:	Rebecca Owens
Application Expiry Date:	12th February 2026

APPLICATION SITE

The application relates to a large, three storey end of terraced property located in a designated local centre and within the settlement boundary. As such the site is in a mixed use area where there are retail, commercial and residential uses present. The property is currently vacant and due to its corner position, height and width of its frontage, is a relatively prominent building within the streetscene. It is also noted that the application site is located within Urban Character Area 7 (Penydarren) and borders Urban Character Area 6 (Williamstown, Cae Pant Tywll and Morgantown).

DESCRIPTION

A Certificate of Lawful Development is sought for the use of the property as a House in Multiple Occupancy (HMO). The information submitted in support of the application highlights that planning permission was granted for a HMO at this property (Planning reference P/85/0119) and this use was implemented with no intervening use occurring. As such, the application seeks confirmation that the property can recommence use as a HMO without the need for a new planning permission.

PLANNING HISTORY

There is no recent planning history relating to this site. However, it is noted that on 15th July 1985, planning permission was granted for a change of use of this property from a dwelling to a House of Multiple Occupancy (Planning Reference: P/85/0119). Other planning applications following this approval include the following:

- P/25/0013 Use of the property as a House in Multiple Occupancy (HMO)
Lawful development certificate refused on 1 May 2025 for the following reasons:
1. Having regard to the length of time the property has been vacant and a failure to demonstrate an intention to retain the use as a House of Multiple Occupancy, on balance of probability, the use is found to be

abandoned and as such full planning permission would be required for the property to be used as a House of Multiple Occupancy.

2. The original permission for the use of the property has a House of Multiple Occupancy did not apply to the whole building subject to this application. As such the use of the property has a House of Multiple Occupancy would be outside of the scope of the original permission.

P/23/0154	Use of property as House of Multiple Occupancy, conversion of garage to provide additional living space in association with this use together with alterations to garage roof and to fenestration Withdrawn on 11 July 2024
P/92/0526	Provision of a fire escape Granted planning permission 3 March 1993
P/91/0384	Front elevation dormer extension Granted planning permission subject to condition on 13 November 1991
P/89/0168	First floor extension Granted planning permission 1 July 1989
P/87/0030	Alterations to front elevation Granted planning permission 11 February 1987
P/86/0471	Erection of extension with pitched roof Granted planning permission subject to a condition on 7 th October 1986. This condition states: <i>"The approval hereby conferred shall relate strictly to the use of the premises for the purpose of an extension to the applicant's private quarters. It does not confer approval for any extension or enlargement of the use of the premises as a house in multiple occupation"</i>
P/85/0119	Change of use of dwelling to house in multiple occupation Granted planning permission subject to condition on 15 July 1985

PLANNING CONSIDERATIONS

It is noted that a previous application for a lawful development certificate for the use of this building as a HMO was refused on 1 May 2025 for two reasons, firstly, the use was considered to be abandoned in planning terms and secondly as the original HMO use did not appear to relate to the whole building. This is a resubmission following the refusal.

Second refusal reason

Dealing with the second reason for refusal first, the local planning authority do not contest that the former use of the site (namely 68-70 Brecon Road) as HMO was lawful. This was granted planning permission under planning reference P/85/0119 and there is sufficient evidence to demonstrate that the use was implemented. However, it was noted that a further application in 1986 (planning reference P/86/0471) proposing an extension to 70 Brecon Road (not 68-70 Brecon Road) included a condition stating:

“The approval hereby conferred shall relate strictly to use of the premises for the purposes of an extension to the applicant’s private quarters. It does not confer approval for any extension or enlargement of the use of the premises as a house in multiple occupation”.

The application address and this condition clearly indicates that a portion of the building did not form part of the larger HMO use and as such the use of the whole of 68-70 Brecon Road as a HMO was never granted permission. As the approved plans for the application for the change of use to a HMO and this later application for an extension are no longer held by the local planning authority, it is unclear as to what part of the property was in use as a HMO and what was in use as private living quarters. However, further investigation into the planning history would also seem to support the assertion that there was a private unit within the property that was separate to the HMO.

An application was submitted and granted approval in 1991 for a front elevation dormer extension (Planning reference P/91/0384) and the application file and approved plans for the development are available. During the application process the planning department’s planning manager wrote to the applicant to raise concerns with respect to the design of the development and advised that the larger dormer be amended to two smaller pitched roof dormers. In this letter he also asks for confirmation that the Kitchen and bathroom extensions would be ancillary to and not separate from the existing use of 70 Brecon Brecon Road, that is as a class C1 Hostel. The need to clarify whether it would be used in conjunction with the “hostel” use would suggest that there may have been a mixed use at the property. Following this letter, the plans were amended and the proposed part elevation clearly state that the kitchen and bathroom which would be provided by the dormer extension *“are ancillary to & not separate from the existing use of the main dwelling”*. The reference to a dwelling and not HMO could suggest that this part of the building (second floor) may have been the private residence or at least a part of it. An objection to this application also makes reference to the fact that the property has already been extended to a third storey at the rear. This may make reference to the extension approved by the 1986 application to serve the private living quarters of the applicant which would also support the view that at least part of the 3rd floor was private. However, it is recognised that the sub committee report highlights that the existing kitchen and bathroom on the second floor of the premises lacked adequate height and proper ventilation and as such the planning application had been submitted to bring up to standard the facilities within the premises for the numbers of residents living there and that the proposal if allowed would not result in additional residents. Reference is also made to objections received in relation to problems associated with the usage of the premises to date. This may indicate that the dormer extension was for use as part of the HMO and the word “dwelling” was in fact used in reference to this. The only floor plans are those of the dormer extension itself, so the wider layout is not apparent.

A further application was made in 1992 for the provision of a fire escape (Planning reference P/92/0526). Again, no floor plans were submitted with the application, but the validation form indicates that planning permission was required because provision of fire escape for flats has no PD rights. This may indicate that the fire escape was for a flat at second floor level.

In response to this second reason for refusal the plans have been resubmitted with the redline boundary amended to omit the garage and workshop annexes to the rear of the property. Plans dated July 1992 have also been provided that clearly state that these elements are separate to the HMO. However, it is not known where these plans have

originated from. They are not the plans approved under the application for a fire escape which was submitted in October 1992 and these plans do not appear to accurately reflect the layout of the second floor, seemingly not illustrating the front dormer roof extensions and showing all the front rooms at this level serving bedsits. The accuracy of the plan and whether it illustrates the arrangement at the time or an aspirational layout is unclear. Irrespective of this, it seems reasonable to remove these elements as they do not appear to have been used to provide living accommodation. However, it is not considered that these annexes would have provided the private living quarters of the original applicant given that they do not appear to be habitable with profile metal sheeting roofing and no apparent window openings.

Having regard to the above it is considered reasonable to conclude that some part of the main building formed a separate private living quarters for the original applicant and that this was not contained within the garage and workshop annexe. As such, it has not been demonstrated that the whole of the main building (which remains in the red line boundary) was permitted for use as a HMO. It is recognised that over time this separate residential unit may have been absorbed into the HMO. Given that this would have been a C3 use and the original HMO required planning permission it would seem reasonable that the change of use of the private living quarters would in itself have required permission. In this case, even if this change of use took place just after the 1986 planning permission, given that the property was taken out of Council Tax Rating in 1995, the change of use could not have been in place for a continuous period of 10 years to qualify it as lawful.

First refusal reason

As previously noted the local planning authority are satisfied that the property in question has previously been granted permission for use as a HMO and does not dispute that this use was implemented. Whilst subsequent planning applications have been submitted in relation to the property none of these sought to change the use and the planning authority are not aware of any evidence to suggest that a material change in use has occurred. However, a previous application for a lawful development certificate for use as a HMO was refused on the grounds of abandonment. To address this first point of refusal, the planning statement of the current submission has contended that

“a use which has the benefit of a planning permission cannot (absent a material change in use to some other use) be ‘abandoned.’ And as such “Given the Council’s position that the original planning permission for the use of the dwellinghouse was lawfully implemented and there has been no material change in use of the dwellinghouse to some other use, it must follow as a matter of law that the dwellinghouse may lawfully be used for the purpose for which planning permission was granted.” (para. 4).

In evidence of this the case *Pioneer Aggregates Ltd v Secretary of State for the Environment (1985)* has been highlighted.

In *Pioneer Aggregates*, Lord Scarman explored whether a planning permission for the development of land can be abandoned by an act of a party entitled to its benefit and, if not, whether the development which was permitted by planning permission (in any event) has been completed. It was conceded that if what had been permitted had been completed, a resumption of the same type of operation would not be the resumption of the early development under (planning permission) but a new development requiring a fresh planning application.

It is recognised that Lord Scarman saw s.33(1) [now s.75(1) of the TCPA 1990] as being of “crucial importance” it provides:

“Without prejudice to the provisions of this Part of this Act as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested therein.”

He observed that *“The clear implication is that only the statute or the terms of the planning permission itself can stop the permission enuring for the benefit of the land and of all persons for the time being interested therein.”* He therefore reasoned at 142H that:

“Viewed as a question of principle, therefore, the introduction into the planning law of a doctrine of abandonment by election of the landowner (or occupier) cannot, in my judgment, be justified. It would lead to uncertainty and confusion in the law, and there is no need for it.”

He went on to say at 143A that there are a *“number of reported judicial decisions which, upon first sight and before analysis, might seem to suggest that there is room in the planning law for a principle, or an exception, allowing the extinguishment of a planning permission by abandonment.”* He identified three classes of such case: (a) abandonment of an existing use; (b) the creation of “a new planning unit” where existing use rights were lost by reason of a new development sanctioned by planning permission; and (c) where one of two mutually inconsistent permissions is taken up. Lord Scarman was deliberate in drawing a distinction between abandoning a planning permission and abandoning an existing use. Having examined the three categories he concluded on the first question of legal principle that: *“There is no principle in the planning law that a valid permission capable of being implemented according to its terms can be abandoned”*. It is important to note that he does not just refer to planning permission but specifically refers to a *“valid permission capable of being implemented”*. Lord Scarman then turned to the second of the two main questions concerning the completion of permitted development. On the facts he found that it had not been so completely and therefore remained capable of continuing to be implemented.

The nature of this case is of particular importance as it relates to an operational development which had still not been fully implemented because mining is a continuous operational development. The local planning authority contest that whilst Lord Scarman identified that a planning permission itself cannot be revoked, a lawful use with the benefit of planning permission where that use had been fully implemented and in effect spent can in fact be abandoned.

The issue of a planning permission being spent is explored in *Cynon Valley BC v Secretary of State for Wales (1987) 53 P & CR 68*. This related to a building which had been granted permission for use as a fish and chip shop with the permission being implemented. The building was subsequently changed to an antique shop under permitted development rights and the case centred around whether the original planning permission could be resumed without the need for a new planning application. Balcombe LJ noted that:

“The short, but by no means easy, point in this part of this appeal is whether the change back from antique shop to fish and chip shop (and Chinese takeaway) is development to which the 1958 planning permission applies. Since the 1958

planning permission cannot have been abandoned (see Pioneer Aggregates) the question is whether it was fully implemented, or "spent," once the initial change of use took place in 1958 or thereabouts. Mr. Kelly for the local authority submits that it was: Mr. Laws for the Secretary of State submits that it was not."

The court accepted the submission that once the initial change of use to a fish and chip shop had been implemented, the permission was "spent" and as such, despite the benefit of planning permission the use could not remain indefinitely. It is recognised that in this example there was an intervening use. However, the principle of a planning permission being capable of being spent is clear. That case expressly considered *Pioneer Aggregates* and considered the conclusion that such a permission was spent, not to be irreconcilable with the reasoning in *Pioneer Aggregates*. That case also considered the consistency of this position with the predecessor to s.75(1). The argument made by the local authority in that case was that the purpose of what was then s.33, in the context of a permission for a material change of use was "to meet the case of a change in ownership or occupation of the land before a planning permission had been implemented." The local authority also relied on the following passage from the Court of Appeal in the case of *Young v. Secretary of State for the Environment* (1984) 47 P & CR 165:

"There is ample and powerful authority for the proposition ... that, when land ceases to be used for a lawful purpose for a period of time, it is a question of fact whether the right to use the land for that purpose has been abandoned so that resumption of that use amounts to development requiring planning permission. . . . There is [no authority] to which we were referred or that we have been able to find that allows of the application of the concept of abandonment to a situation in which without interruption one use follows another. The use of the word "abandonment" in such a circumstance is inappropriate and potentially misleading. The position which has then arisen is simply that the later use, whether unlawful or rendered lawful by reason of the operation of article 3 of the General Development Order 1977, has in fact supplanted the former which cannot be revived without an operation of law, for example section 23(9), or the grant of planning permission. A lawful use becomes attached to the land; it enures for the benefit of it: see section 33(1) of the Act. It remains, contrary to the submissions of counsel for the appellant, attached to that land only so long as it is not supplanted by the introduction of another use or is detached by some other process such as abandonment following interruption of use."

Accepting the local authority's submissions in *Cynon Valley*, the Court of Appeal, they considered that that passage of *Young* had been approved by the House of Lords and said in respect of s.33 and *Pioneer Aggregates*:

"We appreciate that this involves giving a restricted construction to section 33(1) as well as making a significant qualification to Lord Scarman's classification in the Pioneer Aggregates case, but this seems to us inescapable from the decision in Young, and we are encouraged in reaching this conclusion that it follows the express finding of the Court of Appeal in Young's case."

Therefore, the Court of Appeal considered that the idea that a planning permission for a material change of use was spent on implementation could be reconciled with s.33(1), now s.75(1), and although this was a qualification on what had been said in *Pioneer Aggregates*, it was consistent with other authority. The analysis in *Cynon Valley* clearly considers the nature of use rights granted by a planning permission for a material change of use.

It is noted that the applicant has also made reference to *Stockton on Tees BC v Secretary of State for Communities and Local Government (2011)*. This concludes that there is no doctrine of abandonment of planning permissions through mere non-use and allowed a use with planning permission to resume following a period of long term non-use and disappearance of physical structures. It makes a distinction between uses that are lawful by virtue of the length of time for which it has been taking place and those which derive from planning permission which are noted by Langstaff J to be “a different beast”.

It is recognised that this scenario is similar to the situation that is currently being considered, where both relate to a use which has the benefit of planning permission without any intervening use taking place. Purely having regard to the outcome of this case it would appear that the applicant is correct in asserting that abandonment cannot apply in this case. However, this would amount to a confined viewpoint that would not have regard to the apparent debate in the various judicial decisions as to whether the *Stockton* case proposition is correct as a matter of law.

Stockton interprets *Pioneer Aggregates* as determining that planning permissions cannot be abandoned. However, there is some disagreement to this stance as *Pioneer Aggregates* specifically related to ongoing operation development and not a one off change of use. In such cases the permission was never fully spent and as such remained capable of implementation. Other authorities have interpreted *Pioneer Aggregates* differently, the cases of *Young v Secretary of State for the Environment [1983] 81 LGR 389* and *Cynon Valley BC v Secretary of State for Wales (1987) 53 P & CR 68* support the view that a planning permission for a material change of use is a permission to implement the use, not to carry it out indefinitely. Once it has been implemented the permission is spent and therefore there is no reason why the implemented use cannot, as a matter of law, be abandoned.

Moreover, there is debate as to whether *Pioneer Aggregates* established that any use with planning permission could not be abandoned or whether the decision in *Pioneer Aggregates* is specific to the type of development with which it was concerned: namely operational development where the development had still not been fully implemented because mining is a continuous operational development.

Two authorities which differ in their interpretation of *Pioneer Aggregates* to the view of *Stockton* are :

- *James Hay Pension Trustees Ltd v The First Secretary of State and Others [2005] EWHC 2713 (Admin)*; and
- *M&M (Land) Ltd v Secretary of State for Communities and Local Government [2007] EWHC 489 (Admin)*

In *James Hay* at [39] the judge explained that the issue was whether there can, as a matter of law, be an abandonment of a use of land authorised by a planning permission by mere cessation. The Claimant relied on s.75 of the TCPA 1990 and *Pioneer Aggregates*. However, the judge in *Hay* took the view that:

“42. *The Pioneer case concerned operational development where the development had still not been fully implemented because mining is a continuous operational development: every bite of the shovel is a fresh development...*”

The submissions of the Defendant were recorded at [43]-[44]:

“44. The first defendant contends that the development in question in this case was, the “making of any material change in the use of any buildings or other land” being a “development” within the definition of that term in section 55(1) of the TCPA 1990. He contends that, by way of contrast to the type of operational development involved in Pioneer, the development in the present case was implemented, or completed, as soon as the change in use was made. Accordingly, this present case does not fall within the terms of the general principle as stated by Lord Scarman in Pioneer. In support of this proposition the first defendant relies on a passage in the judgment of Lord Justice Watkins in the prior case of Young v SSFE 1983 81 LGR 389 at p.398 where he said:

“A lawful use becomes attached to the land, it enures for the benefit of it; see section 33(1) of the Act. It remains, contrary to the submission of counsel for the appellant, attached to that land only so long as it is not supplanted by the introduction of another use or is detached by some other process such as abandonment following interruption of use.”

The first Defendant says that this position, namely that a lawful use may be abandoned following interruption of use, was addressed by the Court of Appeal in the case of Cynon Valley BC v Secretary of State for Wales and Another 1986 2EGLR 191, a case which post dated Pioneer. In that case Lord Justice Balcombe said as follows:

“We are persuaded that a careful consideration of the decision in the House of Lords in Young v Secretary of State for the Environment (Supra) does indeed involve an endorsement of the passage cited from the judgment of the Court of Appeal in that case...we appreciate that [the Court’s decision] involves giving a restricted construction to section 33(1) as well as making a significant qualification to Lord Scarman’s classification in the Pioneer Aggregates case, but this seems to us inescapable from the decision in Young, and we are encouraged in reaching this conclusion that it follows the express finding of the Court of Appeal in Youngs’ case.”

In particular the first defendant urges upon me the characterisation by the Court of Appeal in Cynon Valley that:

“the planning permission granted in 1969 for use as a light industrial building was spent as soon as the change was complete.”

In this way the first defendant says that the general principle stated in Pioneer Aggregates does not extend where the development is completed or spent. In the case of development in the form of making a change of use, the Court of Appeal in Cynon Valley has indicated that the development is completed, or spent, as soon as the change is made. Accordingly, the defendant argues that the concept of abandonment can, in law, apply to a change of use once the change of use has been made.”

At [45] the judge accepted those submissions, concluding that the concept of abandonment can, in law, apply to a change of use authorised by a planning permission, once that change of use has been made.

In *M&M Land* The deputy judge went on to observe that:

“...This development of the law has survived what might have seemed to be rather a chill wind blowing from the House of Lords in the case of Pioneer Aggregates [1985] AC 132. In Cynon Valley Borough Council [1986] 2 EGLR 191, the Pioneer Aggregates case was explained by the Court of Appeal. The position is that a valid planning permission still capable of being implemented according to its terms cannot be abandoned. That was the position of the permission that the House of Lords was considering in Pioneer Aggregates. It was a mineral operation and every shovelful dug amounted to another act of development. Therefore, although it had been begun, the planning permission was not spent and remained capable of implementation. However, in other cases – perhaps most other cases -- the planning permission can only be implemented once, and once the planning permission was implemented its effect had passed and it was spent, as the Court of Appeal made clear in the Cynon Valley case.”

They generally accept that *Pioneer Aggregates* was limited to ongoing operational development where permission may remain capable of implementation and that this does not govern completed changes of use. They also explored the premise of spent permissions, highlighting that a material change of use is deemed to be completed once the change has occurred. Thus, once a permission is spent what exists is a lawful use of land which is subject to the general principle that a lawful use may be lost through abandonment following cessation and non use and that this applies equally to uses confirmed by a certificate of lawfulness. These were considered in *Stockton* but disagreed with by the Judge

Based on the authorities, there is no dispute that a use established other than by planning permission can be abandoned (see *Hartley v. Minister of Housing and Local Government* [1970] 1 Q.B. 413). Nor is there a dispute that a use certified as lawful by a certificate of lawfulness can be abandoned (see *M&M Land* and *Challinor*). The question is whether a use first authorised by a planning permission should be treated differently as was decided in *Stockton*. It is on this point that the applicant and local planning authority differ.

The Local Planning Authority would contend that *Stockton's* interpretation was wrong having regard to earlier caselaw and the case of *Roger Wood v SSCLG* [2015] EWHC 2368 (Admin) which is notably post *Stockton*. In *Wood*, both *James Hay* and *M&M* were cited with approval. In addition, and of particular importance is the fact that Lindblom J (as he was then) observed that *Staffordshire County Council v Challinor* [2007] EWCA Civ 864 had approved the *M&M Land* case, prior to *Stockton*, and yet *Challinor* had not been cited to the judge in *Stockton*.

In M&M Land at [20], the passage cited with approval in *Challinor*, the judge states:

“20. In my judgment, the Secretary of State's argument is the right one. It seems to me that section 191(6) does no more and no less than declare conclusively that at the point of time that the certificate refers to, that particular use is lawful in that it operates like a planning permission for a change of use which enures for the benefit of the land and makes a particular use lawful and then is spent. However, as I have said, the authorities are quite clear that that does not stand in the way of a permitted change of use being abandoned. It would require the plainest words to compel me to find that the certificate of lawful use achieved a result that is substantially different from that which a planning permission achieves, and I simply

do not find that degree of compulsion in the words of section 191(6). In my judgment, the position is the same for a certificate of lawful use as it is for a planning permission. A use permitted can be abandoned: a use that has been dignified with a certificate of lawful use can also be abandoned, notwithstanding the words of section 191(6)."

Thus, whilst the facts concerned a certificate of lawfulness, the judge was in no doubt that a use first authorised by a planning permission could also be abandoned. Furthermore, The Court of Appeal in *Challinor*, citing *M&M Land* stated:

" 55. Indeed, it has been held in the *M and M (Land) Ltd* case that a use certified by a CLU can be abandoned, despite section 191(6). It was held there that "... section 191(6) does no more and no less than declare conclusively that at the point of time that the certificate refers to, that particular use is lawful in that it operates like a planning permission for a change of use which enures for the benefit of the land and makes a particular use lawful and then is spent. However, as I have said, the authorities are quite clear that that does not stand in the way of a permitted change of use being abandoned. ... A use permitted can be abandoned: a use that has been dignified with a certificate of lawful use can also be abandoned, notwithstanding the words of section 191(6)."

As *Challinor* is Court of Appeal authority, it would take precedent over *Stockton* and had it been considered would have been binding on Langstaff J. It is acknowledged that abandonment of use rights granted by a planning permission was not the factual context of *Challinor*, but the approval of the passage of *M&M Land* that such rights were capable of being abandoned (whether permitted by a planning permission or the subject of a certificate of lawfulness) was clearly relevant to the reasoning in that judgment.

Thus having regard to all the information above and given that *Cynon*, *Young*, and *Challinor* which are higher court authorities, are all supportive of the view that a use authorised by a planning permission can be abandoned, it is contested that the use of this property as a HMO can be abandoned, given that it was fully implemented and effectively spent. The Local planning authority therefore assert that it was correct in considering whether the use of the building as HMO had in fact been abandoned and that this assessment would again be applicable in determining whether a lawful certificate can be issued for the proposed use.

The relevant tests in relation to abandonment which are summarised in the *Castell-Y-Mynach v Secretary of State for Wales (and Taff Ely Borough Council)* [1985] JPL 40 case are set out below:

1. The length of time the property has been vacant
2. Intervening uses
3. The physical condition of the property and whether it is capable of accommodating its former use
4. Intention of the owner

In addition, *Hughes v Secretary of State for the Environment* (2000), the court of appeal confirmed that lawful use rights can be abandoned and applied an objective test for abandonment based on what a reasonable person would conclude from all the circumstances.

The previous assessment in relation to abandonment has therefore been reiterated below. However, it is noted that this is based on the planning statement of the earlier Lawful Development Certificate application (P/25/0013) as this information has not been re-submitted as part of this current application.

Tests of abandonment

The former use

The local planning authority do not contest that the former use of the site (namely 68-70 Brecon Road) as a HMO was lawful. This was granted planning permission under planning reference P/85/0119 and there is sufficient evidence to demonstrate that the use was implemented. However, as highlighted above, a further application in 1986 (planning reference P/86/0471) proposing an extension to 70 Brecon Road include a condition stating:

“The approval hereby conferred shall relate strictly to use of the premises for the purposes of an extension to the applicant’s private quarters. It does not confer approval for any extension or enlargement of the use of the premises as a house in multiple occupation”.

This would suggest that a portion of the building did not form part of the larger HMO use and as such the use of the whole of 68-70 Brecon Road as a HMO was never granted permission.

Period of non use

The supporting information originally submitted with the previous application for a lawful development certificate, indicated that the property became vacant following the death of the previous owner and *“this continued during probate and the during the time it took to facilitate the sale of the property”*. However, this appears to contradict the applicant’s account which suggests that the property has been continuously used as a HMO and was only made vacant to facilitate its sale.

Notwithstanding the ambiguity of the information submitted and the omission of the exact date it became vacant, the Councils own records have provided some further information.

With respect to the date that the property became vacant, the Grant of Probate indicates that the previous owner died in 2019. However, Council records highlight that the Council Tax department were notified that the property was empty and requiring renovation taking effect from the 13 April 1995. On 24 October 1995 the property was removed from Council Tax Rating by the Valuation Officer Agency and this remains the case to date. However, in April 2025 the Council applied a Provisional Council Tax Band with an effective date of August 2022. It is currently listed as long term empty under the council tax record. As such, it would appear that the property became vacant a number of years before the death of the previous owner and has not been in use for approximately 20 years.

In terms of the suggestion that the property has been in use as a HMO in recent years, the above council tax situation would suggest that this is not the case or that occupation has been in contravention of this.

The previous evidence of the applicant rests on photographs showing furniture in the rooms (including beds) which are in good condition and therefore suggest that the property has only been empty for a short period of time, the comments of the estate agent referring to tenants at the property, rental figures provided by the previous owner and the fact that utilities are still supplying the property (which if not in use would have been disconnected due to the expense). However, the presence of furniture does not in itself indicate recent occupation nor does the fact that it is being served by utilities. The estate agent responses do appear to indicate that there were people at the property when inspected and although referred to as tenants it is not clear if this is indeed the case and does not sufficiently demonstrate a HMO being in operation. In fact, the estate agent herself suggests that they may not have been there legally. Furthermore, whilst it is recognised that the applicant was informed that the previous owner was being paid £300 a room, there is no evidence that this is the case (for example, accounts or receipts etc.).

It is also noted that in attachment 3 of the original supporting statement, the applicant requested a copy of the HMO licence from the estate agent. It is not clear if this document was provided but it has not been submitted in support of this application. A property of this size, occupying three floors would require a HMO licence and records from the Environmental Health Department would suggest that the property is not currently licenced and has not been licenced in recent years.

Although no formal publicity exercise was undertaken for the previous application, it appeared in the Local Planning Authority's weekly list where it was picked up by local councillors. One of these, resides in close proximity to the application site and they provided a written representation. In this the Councillor highlighted that they purchased their property in January of 2014 and in the time that they have resided there (over 12 years), 68-70 Brecon Road has not been occupied as a HMO. They have also indicated that other neighbours in the direct vicinity of the site would also be able to verify this and confirm a longer timeframe of non-use.

Indeed a recent planning application for use of property as House of Multiple Occupancy which was subsequently withdrawn (planning ref: P/23/0154) received thirty letters of objection and a petition comprising one hundred and fifteen names. Given the clear opposition and strength of feeling in relation to the use of the property as a HMO, it would be expected that had a HMO been operating at the site in recent years that the Council would have been made aware of this. Indeed many of the representations received referred to the previous use of the property as a HMO and the associated problems and antisocial behaviour linked to it with a number specifically referring to it being during the 1980's and other stating that it has not been used as a HMO in excess of 10 years (which would now be in excess of 12 years)

Having regard to the above, it is not considered that the evidence submitted would on balance of probabilities indicate that the property has been used as a HMO since 1995 given the seemingly contradictory information held by the Council.

Intervening uses

Planning permission has not been granted for any changes of use to the property since the application for a HMO in 1985. In addition, council records indicate that the property was removed from Council Tax Rating in 1995 and is currently recorded as vacant. As such there is nothing to suggest that there have been any intervening uses. The applicant has previously suggested that the property has been occupied in recent years but the

evidence put forward did not in the opinion of the Local Planning Authority sufficiently demonstrate that the property has indeed been utilised as a HMO. In fact the information provided could be attributed to its use in another capacity, for example as a single dwelling. Notwithstanding this, there is insufficient information to establish exactly how it has been used, if indeed it has been occupied at all since becoming vacant.

Condition of the building

The supporting statement for the previous lawful development certificate notes that the building “*to all intents and purposes, can be readily used as a HMO again with little work to enable it to return to its lawful use*”. This has been evidenced by the inclusion of photographs and an account from the estate agent which suggest that despite issues with damp and the need for general refurbishment, the property is in reasonable condition. In determining abandonment based on the condition of the building the main consideration is whether the use is still capable of being re-commenced at the property even if this requires financial investment or technical challenges. In this case, the Local Planning Authority do not contest that the condition of the building is such that it could be reoccupied following necessary works to bring it up to the relevant standards.

Intention

The applicant's previously submitted information suggest that the property only became vacant following the death of the owner in 2019 with the new beneficiary not wishing to continue managing the HMO and selling it under vacant possession. However, as noted above, the property was removed from the Council Tax List in 1995 which would suggest that the building was not being inhabited at this time. The exact reason for this is unknown but there is no evidence to suggest that the use recommenced at any time since 1995 nor that it was the previous owners intention to restart the use at any time. As such, it would appear that the property has been vacant for approximately 21 years rather than within the last 5-6 years. No information has been submitted to indicate why the property has been out of use for such an extended period of time or indeed to demonstrate the intention of the owner in respect to its use.

Conclusion

In conclusion, it is not considered that the case law put forward by the applicant is sufficiently robust to demonstrate that a use with the benefit of planning permission cannot be abandoned and as such the Local Planning Authority's previous assessment in relation to abandonment still stands. In this respect it is considered that the use of the property has been abandoned due to the length of time that has passed since it last operated in this capacity and given no evidence to demonstrate that the previous owner had intended to reuse the property as a HMO. In addition, it would not appear that the original planning permission for use as a HMO extended to the whole of the property subject to this application, with a portion of the building being used as the private living accommodation of the previous owner.

RECOMMENDATION: BE REFUSED for the following REASONS:

1. Having regard to the significant length of time that the property has been vacant and a failure to demonstrate an intention to retain its use as a House in Multiple Occupation, the use is found to be abandoned and as such full planning permission

would be required for the resumption of the property as a House in Multiple Occupation.

2. The planning permission (Ref P/85/0119) for the use of the property as a House of Multiple Occupation did not apply to the whole building, given that it also accommodated a separate private residential use. As such the use of the whole property as a House of Multiple Occupation does not benefit from planning permission.

RECOMMENDATION ENDORSED



Director of Neighbourhood Services

DATE: 27.05.2026