
Appeal Decision

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 03 February 2020

Appeal Ref: APP/P4605/X/19/3220000

38 Carlyle Road, Edgbaston, Birmingham, B16 9BJ

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act") against a refusal to grant a Certificate of Lawful Use ("the CLU").
- The appeal is made by Rajinder Bhogal ("the Appellant") against the decision of Birmingham City Council ("the Council").
- The application Ref 2018/04777/PA, dated 11 June 2018, was refused by notice dated 10 October 2018.
- The application was made under Section 191(1)(a) of the 1990 Act.
- The use for which the CLU is sought was described within the application form as, *"The whole property is an established as a certified HMO for over 10 years now and will continue to be used as a HMO in accordance with Class Sui Generis . The property is a 3 storey terraced property, with gardens to the Rear."*

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. The application form explains, amongst other things:
 - a) *"The property has been used for over 10 years as a Sui Generis HMO in breach of its Class as a C3."*
 - b) *The use began more than 10 years before the date of the application.*
 - c) *The property has been used as an HMO for eight people."*
2. The Appellant has to show that No. 38 was used as an HMO for 8 people between 11 June 2008 and 11 June 2018 and that there has been no material break in the use of No. 38 between those dates.
3. The onus of proving that the use sought is lawful rests with the Appellant. He has to show this on the balance of probabilities i.e. that the claimed use was more likely than not to have been carried on at No. 38 between the relevant dates. The evidence that the Appellant provides needs to be sufficient, precise and unambiguous to justify the grant of the CLU.

Reasons

4. The Appellant relies in part on the evidence of Heather Thrush.
5. Heather Thrush explains, amongst other things, in her Statutory Declaration dated 24 August 2018 that:
 - a) She has lived at No. 36 since 1998.

- b) Between 1998 and 2006 No. 38 was mainly full (it was a seven bedroomed property) but numbers dropped between 2006 and 2011 with numbers being between 4 and 6 residents.
 - c) From 2011 when the Metropolitan Group took over, the rooms were let out on a contract basis. Although numbers fluctuated, they were generally in the region of 4 to 6 residents at any one time.
- 6. I consider that this evidence is sufficient to conclude that No. 38 was not used as an HMO for 8 people between 11 June 2008 and 11 June 2018.
 - 7. In the Appellant's grounds of appeal it states that No. 38 has been used as an 8 bedroom HMO for 20 years. However, the supporting evidence from Heather Thrush does not support that assertion.

Conclusions

- 8. For the reasons given above I conclude that the Council's refusal to grant the CLU in respect of an HMO use of 38 Carlyle Road, Edgbaston, Birmingham, B16 9BJ for 8 people between 11 June 2008 and 11 June 2018 was well-founded and that the appeal should fail. Accordingly, I will exercise the powers transferred to me in Section 195(3) of the 1990 Act and dismiss the appeal.

Formal Decision

- 9. The appeal is dismissed.

Tim Belcher

Inspector