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# Appeal Decision

Site visit made on 30 January 2020

**by Sarah Dyer BA BTP MRTPI MCMI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> February 2020**

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**Appeal Ref: APP/Q1445/X/19/3223481**  
**64 Barcombe Road, Brighton BN1 9JR**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Richard Carr (Carr Brothers Property Ltd) against the decision of Brighton & Hove City Council.
  - The application Ref BH2018/01038, dated 3 April 2018, was refused by notice dated 27 November 2018.
  - 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 a large house in multiple occupation.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended, which relates to an application for a LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.
3. The Council was asked to attend the site visit but was not represented. I carried out the site visit as a 'access required site visit'. Whilst I was accompanied by the appellant and his agent, there was no discussion of the merits of the case. The Council have been informed of my actions and have been invited to make representations. No comments have been received.

## Main Issue

4. The main issue is whether the Council's decision to refuse the application for a LDC was well-founded.

## Reasons

5. The appellant has set out in his application form that he is seeking a certificate for an existing use and that that use falls to be considered as 'sui generis' to the use classes set out in the Town and Country Planning (Use Classes) Order

- 1987 (as amended) (the UCO). The description of the existing use for which the LDC is sought is set out on the application form as a 'large house in multiple occupation'. The Council has referred to a '7-bedroom house in multiple occupation (sui generis)' in its decision.
6. An LDC application must relate to a specific existing or proposed use, operation or activity and the application was made in those terms. The Council considers that in order for a LDC to be granted it is necessary to establish that the use as a 7-bedroom House in Multiple Occupation (HMO) has been in operation for at least 10 years up to the date of the submission of the application. This is the test which falls to be considered under 171B (3) of the Town and Country Planning Act 1990 (as amended) (the Act) and relates to 'any other breach of planning control'.
  7. However, the appellant argues that the Council should have considered the application against 171B (2) of the Act because the appeal property retains the characteristics of a single dwelling house. The test under 171B (2) is that the use has been carried on for four years.
  8. The evidence shows that the property has been continuously occupied by seven residents. Under the terms of the UCO both a dwelling house (Class C3) and a Class C4 House in multiple occupation are limited to a maximum of six residents. It follows that use of a dwelling house even by seven people living together as a single household, does not fall into Class C3 or Class C4 and is sui generis. Thus, while a 7-bed HMO can be regarded as a dwelling house, as argued by the appellant, it falls to be considered under 171B (3) of the Act because planning permission is needed for change of use from a single dwelling house to a 7-bed HMO, as is the case here.
  9. The appellant refers to an application for a LDC under section 192 for extensions to 12 Stafford Road, Brighton (Council Reference: BH2018/02266). However, in that case the application related to a small-scale HMO under class C4 of the UCO, thus it is not directly comparable to the appeal site.
  10. My attention has also been drawn to an appeal decision in respect of a LDC at 9 The Crescent, Brighton (Appeal Reference: APP/Q1445/X/17/3185058). In that case the Inspector highlights that the application related to operations and not a change of use. Therefore, this appeal decision is also not directly relevant to the current appeal.
  11. The evidence which was submitted in support of the application does not demonstrate that the site has been used as a 7-bed HMO for the required 10-year period. No further information has been brought forward as part of the appeal, and by his own admission the property was previously occupied by a couple and a fluctuating number of foster children which would have been a Class C3 use. On this basis the appellant has not demonstrated that on the balance of probabilities the 7-bed HMO has been in use for 10 years and the Council's decision was well founded in the context of their consideration of the site as a large-scale HMO (sui generis).

## **Conclusion**

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a large house in multiple occupation was 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.

*Sarah Dyer*

Inspector