Appeal Decision

by Chris Hoult BA(Hons) BPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 September 2020

Appeal Ref: APP/G5750/X/19/3244093
104 Hilda Road, Canning Town, London E16 4NN

- 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 J D Miah against the decision of the Council of the London Borough of Newham.
- The application Ref 19/02862/CLE, dated 14 October 2019, was refused by notice dated 4 December 2019.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
- The use for which a LDC is sought is the existing use of a dwelling as a House in Multiple Occupation ("HMO") Use Class C4.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In an appeal of this kind the planning merits of the use are not for me to consider. My decision will turn on the legislative provisions, relevant planning case law and the submitted evidence which, in this case, relates to the living arrangements in the appeal property over a number of years. Given therefore that it was not necessary in order to reach a decision to see the appeal site and its surroundings, a site visit was not carried out.

3. As will be seen below, there is an enforcement notice already in force in respect of the appeal property. That relates to a *sui generis* HMO i.e. a HMO which can accommodate 7 occupants or more. The LDC application relates to a HMO under Class C4 of the Town and Country Planning (Use Classes) Order 1987 as amended i.e. a HMO that can accommodate up to 6 occupants. In this decision, I shall use the terms "large HMO" to refer to the former and "small HMO" to refer to the latter.

4. The Council has concerns over the validity of the appeal, given that there is an extant enforcement notice. I deal with that in more detail below, with regard to the provisions of s191(2)(b) of the 1990 Act. The notice does not relate to a breach of a planning conditions so the provisions of s191(3)(b) of the 1990 Act do not apply. The provisions of s285(1) of the 1990 Act, under which the validity of an enforcement notice shall not be questioned in any proceedings whatsoever on any of the grounds on which, for example, a LDC appeal under s195(1) may be brought, would nevertheless still apply.

Main Issue

5. Having regard to the provisions of s195 of the 1990 Act, the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

Background

6. The appeal concerns an end of terrace dwelling arranged over three floors. Its planning history and pattern of use and occupation over the years is unclear. In 2016, enforcement action was taken against a material change of use to a *sui generis* HMO. The notice has not been appealed and it is therefore in force. There then appears to have been a series of five applications pursued for a LDC for an existing use of the dwelling as a small (Class C4) HMO of which the present application is the latest[1].

7. Permitted development rights for a change of use from residential use as a single household under Class C3 to a HMO Class C4 use were introduced by virtue of an amendment to the Town and Country Planning (General Permitted Development) Order ("the GPDO") then in force, on 6 April 2010. The permitted development provisions came into force on 1 October 2010. This amendment introduced Class C4 as a separate Use Class relating to small HMOs. A HMO under Class C4 can house 3-6 unrelated individuals who share basic amenities. On 31 July 2013 the Council issued an Order under Article 4 of the GPDO removing permitted development rights for changes of use from Class C3 to Class C4. In the various LDC applications made by the appellant, he claims that the dwelling has continuously been in use since 2004 as a HMO housing up to 6 people.

8. The date of the present application is 14 October 2019. The significance of that date is that the use claimed, as a material change of use, could become lawful, in the sense that no enforcement action could be taken against it, if the use had continued for 10 years prior to the date of the application. A change of use from an existing Class C3 use to a Class C4 HMO use could alternatively have taken place under permitted development rights at any time between 1 October 2010 and 30 July 2013. Under such circumstances a property would have been in a lawful Class C4 HMO use at the time the Article 4 Direction came into effect.

9. The appellant's evidence is premised on a case that what he refers to as a Class C4 HMO use has continued uninterrupted since around May 2004, not that a material change of use from Class C3 use has occurred between 1 October 2010 and 30 July 2013. On the contrary, he argues that, between those dates, the property was in use as a small HMO. He thereby argues that the enforcement notice is of no consequence as it refers to a large HMO. He has produced a wealth of evidence with a view to demonstrating this particular pattern of occupation of the property and seeks through this evidence to revisit the circumstances of the Council's enforcement action.

10. The test of the evidence in a case of this kind is the balance of probabilities. The Government's Planning Practice Guidance (PPG) explains the evidential burden that needs to be discharged by an applicant/appellant. It says that, if

[1] Refs. 17/02529/CLE, 18/00184/CLE, 18/01103/CLE, 18/02550/CLE and the present application – I note that the first of these, on the Council's record, does not specify a HMO in Class C4

a local planning authority has no evidence itself or from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability[2].

Structure of reasoning

11. My starting point is the Council's enforcement action in 2016, and the contradictory evidence from the parties in relation to it. If I conclude that the enforcement notice issued was based on sound evidence, to which weight can be attributed, that will have consequences for the lawfulness of any claimed Class C4 HMO use after 2016. The content of the enforcement notice in force will in turn have implications for the overall lawfulness of the claimed use, which I shall explore having regard to the requirements of s191(2) of the 1990 Act. I shall then examine the premise of the LDC application and in particular its reference to a HMO use under Class C4. My assessment of the appellant's evidence, which follows, should be viewed in the context of my findings on these matters.

2016 enforcement action

12. It is instructive to start with the report which recommended action be taken. It refers to site inspections which culminated in a joint inspection with the Police in November 2016 which found that the property was arranged with 7 bedrooms providing sleeping spaces for 9 tenants. A sketch plan of the layout is shown. The report refers to a HMO licence application dating to 2014 resulting in a licence being issued with 7 permitted occupants. The notice subsequently issued alleges only a material change of use to a *sui generis* HMO. However, from my reading of the planning policy issues raised in the report, it is plain that the Council acted on the basis that it was from use as a family dwelling (Class C3).

13. Although not referred to in the report, the Council had served a Planning Contravention Notice (PCN) with a view to gaining information as to how the property was being occupied. It was served on the appellant at various addresses and on the owners/occupiers of the appeal property. A copy of the completed notice is part of the Council's evidence – it was received in September 2016. In it, one Sheila J Islam, who describes herself as the appellant's girlfriend, says that the appellant's family live at the property plus two tenants. The information given is scant and, from it, it would be difficult to ascertain detailed living arrangements and the number of rooms. The names of the two tenants are given as Bethos Patel and Itor Jimenez.

14. The notice was issued on 9 December 2016 and the appellant was given prior notice. Three days prior to its issue, the appellant sent an email to the Council in which he said that the property had been rented out as a HMO with 7 or more people since June 2004 and that he would submit an application to retain this use.

15. The officer's report on the LDC application subject of this appeal refers to other correspondence around the time of the issue of the notice. The appellant says that the appeal property has been a HMO for 11 years and

[2] PPG paragraph 006 Reference ID: 17c-006-20140306

also that is occupied by his family with an intention to have two tenants by 1 August 2016 (email of 11 July 2016). Later, he says that the property has been rented as a HMO with 7 people or more since June 2004 (email of 8 December 2016) and that the property has been rented out as a large HMO (email of 9 January 2017).

16. The appellant's evidence to this appeal deals with the enforcement action, the PCN and the other correspondence. As regards the site inspections, he says he was not aware of any visits where the property was arranged as the Council shows, saying that its account is inaccurate. With regard to the correspondence, he says that it was at one point intended to have a family member move in but the property was never occupied by his family. As for his various references to a large HMO with 7 or more people, he says that he does not say that the 7 tenants would be living there at any one time and that it is not possible to house more than 6 tenants. He says he was not aware of the definition of a large HMO, having thought that a house occupied by 6 tenants could be so described.

17. As for the PCN, in a lengthy response in which he cross-refers its contents to affidavits submitted in support of his case, he expresses a view that it is incorrect and malicious in purpose. He indicates that the person who completed it was not his girlfriend, that she is not known to him, that he was not living at the property in 2016, that his grandmother resides in the USA and that there was no tenant named Bethos Patel.

18. In assessing these contradicting versions of events, I deal firstly with the Council's enforcement report. The sketch plan of the property plainly shows 7 bedrooms, and annotations give an indication of the names and numbers of occupiers and, for some, how long they had lived there. The names correspond with the appellant's evidence from tenancy agreements and bank statements as to who was living there at the time[3]. The report refers to inspections undertaken in April, July and August, as well as November of that year. The findings, that the property was operating as a large HMO, are borne out by the HMO licence granted for such a use in 2014.

19. I compared the sketch plan with a layout plan of the property in the appellant's evidence, which shows 6 bedrooms. That plan is dated May 2018 so it may be that internal alterations had been carried out between 2016 and then. There is also some confusion with the appellant's plan in that it appears to show two versions of a second-floor layout. For all that, both sets of plans show two bedrooms on the first floor and a bathroom and three bedrooms on the second floor. The difference in the number of bedrooms is in the ground floor layout. It is largely the same except that what is shown as a dining area with WC in the appellant's plan is shown as divided between a bedroom (with en-suite WC) and living space in the Council's plan.

20. Following the November visit and subsequent enforcement action, and in the correspondence of December/January 2016/2017, the appellant at that stage was arguing a long-term use of the property in the terms of the allegation, referring to a large HMO and to 7 people living there. I find his current explanation for these references, in the light of the now-claimed lawful use, questionable. He might have challenged the Council's evidence at

[3] Jesus Guardia Ramirez, Royce Buh Meh-Kah, Itor Jimenez, Beth Chauhan and Zygimantas Mecionis are referred to on the plan and in copies of bank statements and tenancy agreements.

the time of the property's layout and details of numbers and names of tenants with photographs, floor plans and his own evidence regarding who was living there, notably in relation to the ground floor arrangements. In any event, most of the tenants identified by the Council are referred to as living there at the time in the appellant's evidence for this appeal. Despite claims made in this correspondence, in the event, he did not appeal the notice.

21. By contrast, the PCN response seems to portray a pattern of occupation significantly different from how the Council found it in its inspections. The names of occupiers are for the most part different. It may indeed have been fraudulently completed as the appellant alleges but not, I consider, in a way which helps his case.

22. It is helpful in some respects. The person responding was probably known to the appellant's family, as she provides their names, and she identifies as one of the tenants a tenant shown as living there in other evidence. The broad pattern of occupation she describes aligns with the description given by the appellant in his email of 11 July 2016. As to who she was and how she might be related to the appellant, it is not known. The appellant denies all knowledge of it but I find it unlikely, for a legal document with penalties for failure to complete it accurately, sent personally him at different addresses, that he would not have been aware of it. Even if he did not complete it, I find it unlikely that it would have been completed without his knowledge.

23. There is no evidence to support an accusation that it was maliciously completed. There is no clear and precise alternative evidence from the appellant at the time as to how the property was occupied. The possibility that it may not have truthfully recorded living arrangements from 2016 nevertheless cannot be discounted. I bear in mind that, while the appellant has since 2017 been claiming a long-term small HMO use of the property, its lawful use at the time was as a family dwelling. Accordingly, the most plausible explanation for the content of the PCN that I can find was that it was completed with a view to confirming that impression. I find it less than probable that it was accurately recording its use as a family dwelling.

24. I therefore conclude on the evidence in relation to the Council's enforcement action that it demonstrates persuasively that the property was in use as a *sui generis* HMO in 2016. The notice was issued on a sound basis and the Council's evidence in relation to it is a matter to which I attribute significant weight. I have no reason to think that the Council's findings were not robust or that the notice was not validly issued. There is no clear evidence from the appellant as to any other pattern of occupation of the property and his explanation of the Council's evidence from the time I find unpersuasive.

25. Accordingly, even if a lawful small HMO use could be demonstrated up to that point, a decisive break in that use was occurring in 2016. Given the evidence of the HMO licence, this could have been occurring since 2014, in spite of the appellant's evidence to the contrary. In the light of this finding, the appellant's evidence of the property's use after the end of 2016 can accordingly be discounted as contributing towards any continuous 10-year period of its use as a small HMO. If it did occur, it would have been as a part of a new period of unlawful use for such purposes. Moreover, the enforcement notice, having not been challenged, is in force, and this has

implications for the overall lawfulness of the claimed use irrespective of the appellant's evidence, which I shall go on to explore.

Requirements of enforcement notice

26. The notice sets out a series of steps that, in summary, require the *sui generis* HMO use of the property to cease and those fixtures, fittings and items of furniture that support the use of the property as a HMO to be removed. Internal locks on doors and additional beds and mattresses are referred to but this is not an exhaustive list. The requirements as worded aim to return the property to its lawful use as a Class C3 family dwelling, and the removal of items in order to achieve this is with a view to preventing any resumption of any form of HMO use, including a putative use under Class C4. No separate challenge, say, under s174(2)(f) of the 1990 Act, was made by the appellant to the specific wording of the notice's requirements.

27. I considered whether the wording of Step 2 of the notice's requirements was sufficiently precise. Step 1 requires any use as a *sui generis* HMO i.e. a large HMO to cease. The requirements of Step 2 follow on from that, in requiring the fittings etc. which have been installed for purposes of facilitating that use to be removed and might have been more clearly worded to make specific mention of the *sui generis* HMO use. For all that, it is clear from the Council's other evidence that it was no part of the notice's purpose to invite some other form of HMO use. The Council had issued an Article 4 Direction in relation to changes of use from Class C3 family dwellings to Class C4 HMOs. In the officer's report on enforcement action, the Council had raised a series of planning policy considerations by way of justification for taking action.

28. S191(2)(b) of the 1990 Act says that uses are lawful at any time if *"they do not constitute a contravention of any of the requirements of any enforcement notice then in force"*. At the time of the application, a notice was in force which required the various fittings etc. required to support any HMO use of the property to be removed. Any continuation of a HMO use once the notice had come into force would contravene those requirements so cannot therefore be lawful. In the light of this, and on this account alone, there are in my view grounds for questioning the validity of the appeal, and for concluding that the appeal must fail.

29. That said, the wider legislative provisions in relation to HMOs make a distinction between two types of HMO, and the notice attacks use as a large HMO which under the GPDO is classed as a *sui generis* use. If the lawfulness of a different form of HMO use had already been established through 10 years' continuous use prior to the coming into force of the notice, by virtue of s57(4) of the 1990 Act, the appellant could revert to such a use. S57(4) says that, where a notice has been issued for any development, *"planning permission is not required for its use for the purpose for which…it could lawfully have been used if that development had not been carried out."*

30. I acknowledge that an argument could be made that use as a small HMO, which the legislation treats as a use which is interchangeable with Class C3 family dwelling use[4], would not contravene the notice's key requirement, to cease use as a *sui generis* HMO. Therefore, I go on to examine whether use as a small HMO could be a lawful use for purposes of this section.

[4] See Part 3 Class L(a) and (b) of Schedule 2 to the GPDO

Basis of claimed lawfulness

31. The evidence submitted by the appellant covers a period from May 2004 until 8 January 2017 so it may be possible for him to demonstrate a 10-year unbroken period of a small HMO use. I start by noting that the application is for a lawful existing use as a HMO under Class C4. It cannot be read any other way. Class C4 was introduced on 6 April 2010. Any existing HMO use before that time will have been a *sui generis* use. The appellant is not arguing that the property was in Class C3 use at that time. Neither does the GPDO operate retrospectively.

32. The only way that a lawful Class C4 HMO use of the property could be established would be as a change of use between 1 October 2010 and 30 July 2013, from an <u>existing</u> Class C3 family dwelling (my emphasis). The appellant argues that the pattern of occupation of the property meets the requirements for a Class C4 use because of the limitations on the numbers of individuals living there. However, that would not confer on the property a lawful use under Class C4 because his evidence is that the use began before 1 October 2010 and has continued since that time.

33. That said, it would be open to me to grant a LDC in modified terms, for a HMO housing 3-6 persons, in line with the legislative provisions and the appellant's evidence of its use since 2004. S191(4) of the 1990 Act would allow me to modify the description of the lawful use in the application and grant a LDC for that use, if I found the appellant's evidence for such a use persuasive. It is therefore incumbent on me to consider the appellant's evidence in support of a claimed lawful use on this basis.

Evidence in support of use as small HMO

General

34. The evidence in support of the application dates from May 2004. The earliest highlighted entry on the submitted bank statements is 6 May 2004, while the earliest of the signed tenancy agreements submitted is dated 28 June 2004. Accordingly, on the evidence, the earliest possible date for an unlawful material change of use to any form of HMO use to have taken place is 6 May 2004. Taking that date as the relevant point in time, the earliest date that the appellant could claim that that use became lawful through 10 years' continuous use would have been on 6 May 2014.

35. That post-dates the Council's Article 4 Direction. However, that relates to changes of use from Class C3 to Class C4, which is governed by Article 3 of the GPDO, which grants such changes planning permission. In this case, lawfulness is derived from the provisions of s191(2) of the 1990 Act. Accordingly, the use could become lawful as a small HMO, albeit not for purposes of Class C4, irrespective of the Direction being in force, on the basis that a material change of use from a Class C3 dwelling to such a HMO occurred on or before 6 May 2004.

36. The appellant's evidence comes under the following broad headings: bank statements, tenancy agreements, affidavits and other personal statements, correspondence and other material. I deal with them on that basis.

Bank statements

37. Statements are submitted for the period between May 2004 and October 2017, in order to show a series of regular rental payments made by tenants of the appeal property over an extended period. They can be cross-referred to tenancy agreements which cover largely the same period. There is a large volume of information, presented with little in the way of explanation. Where rental payments are shown on statements, they are circled in red.

38. I have read through the statements and cross-referred them to the tenancy agreements. I note that there are gaps in the records. The most significant covers the period June-December 2010 but there also gaps from October-December 2004 and September-December 2005. While the red circles shown around certain rental payments by way of highlighting them draw the eye, there is a significant number of other rental payments shown on the statements, often relating to the same name and covering periods of many years, which are not highlighted in this way.

39. To give some examples of these unhighlighted payments, in 2011, they appear under the names of Scarpelli, Alasoadura, Komanesi and Yerokun[5]. Payments not highlighted in 2012 appear under the names of Loock, Akanbi, Burke, Siddiqui and Merriner[6]. Unhighlighted payments in 2013 appear against the names of Fernandes-Avilles, Lacava, Kumar and Mistewicz[7]. This is by no means an exhaustive list. I accept that these may be in respect of payments for other properties owned by the appellant but it is not possible to ascertain this from the evidence. The bank statements on their own do not therefore demonstrate a limit on numbers at the appeal property.

40. There are tenancy agreements shown for residents who also appear on the appellant's table of occupation for whom no records of rental payments are shown, whether highlighted or not. Records for Kestutis Alutis (April-July 2006), Ntomifithi Dlamini (August 2006-September 2008) and Adedoin Ojo (April-August 2009) follow this pattern. These tenants may have paid rent in cash and regular cash payments into the account, of an order that suggests that they could relate to rent payments, are shown. That only serves to make the statements even more lacking in precision as a guide to the numbers of tenants living at the property and paying rent at any one time.

41. I acknowledge the effort that the appellant has gone to in providing these records. However, given the gaps in the records and the difficulties I have outlined above, I find them to be of limited help in seeking to make the case for a ceiling on the numbers of tenants. Moreover, that the appellant may have been selective in highlighting those payments which more readily cross-refer to other evidence regarding past tenants that he has submitted, in order to ensure a maximum of 6 payments in any one month, cannot be ruled out. For these reasons, I give them little weight.

Tenancy agreements

42. Copies of agreements, when viewed alongside records of rental payments for tenants for whom agreements are provided, could provide a basis for reliable evidence that the property has been occupied as some form of HMO. From 2007 onwards, they follow a standardised form. Their content indicates that

[5] See for example entries for March 2011.
[6] See for example entries for Apr-Jul 2012.
[7] See for example entries for October 2013.

the property was let furnished with shared facilities, a share of the tenancy and liability for some outgoings, typical arrangements for a HMO. However, the appellant explains that, once initially signed, they are rolled forward on a year-by-year basis. They cannot therefore on their own act as a reliable indicator of the length of tenants' occupation of rooms within the property. The Council points to, and I myself noted that there are gaps in the records in 2014 and 2016.

43. I had concerns over the earlier form of the agreements, including the agreement with Katarzyna Buczak dated 9 September 2006 and those preceding. They are worded differently to the standard form of the later agreements and include a clause (Clause 8.1) which indicates that the property was let as holiday accommodation. A further clause (Clause 8.5), missing in her agreement but present in preceding ones (such as that with Esther Umoren), refers to a possible repossession of the property on that account. That indicates to me that, prior to 2006, the property may have been rented out to tenants as holiday accommodation.

44. There is no explanation for such a change in the form of agreements after 2006 or why earlier agreements contained these clauses but not later ones. That plainly raises a doubt about the property's claimed use as a HMO before 2006, as its use as holiday accommodation, for short-term lets, would preclude such a use or might have involved a mixed use of the property. Short-term lets in the Greater London area are subject of special powers and any change of use involving such lets from a Class C3 use would be material. Such use would not be the same as a HMO use, which at the time was a *sui generis* use whatever its size.

45. Nor can I rule out, as with highlighted bank records, that the appellant may have been selective in submitting only agreements which can be cross-referred to other evidence of the property's occupation and which, taken together, show a limited number of tenants in occupation at any one time. For these reasons, the agreements are unreliable as evidence either for a limit to the numbers of tenants or that there was full continuity of occupation over the period claimed, which limits the weight I attach to them.

Affidavits

46. I attach little weight to the submitted evidence under this heading, despite it taking the form of sworn statements. That from the appellant generally reiterates claims made in his appeal statement. His claim of having 5 individual tenants from the early years is not borne out by records of highlighted rental payments from around that time. His assertion that Itor Jimenez lived at the property from 2006 is contradicted by his tenancy agreement, which dates from July 2011.

47. Jomirun Nessa Islam lived in the property only in 2004/05, although makes claims as to its use over the whole period since then. She gives details of living arrangements which are not borne out by evidence of rental payments or, if they are accurate, throw into doubt the accuracy of the highlighted records. Her recollections of staying at the property raise doubt about its HMO use, if, as she suggests, it was also used as a short-term let. Tellingly, she says that a previous reference made in a similar statement of hers to 7 people living at the property should now be regarded as a typing error.

48. The appellant's ex-wife, Aisha Kulsoom Miah, was married from 2006-2011 but also refers to its use over the full period from 2004-2019. Again, her assertion that it was rented to 5 people from 2004 is not borne out by the other evidence. Claims regarding Council Tax, from when she was resident, are contradicted by the letter from the Council to which I refer to below.

49. As for the remaining affidavits[8], their content raises significant doubts in my mind as to the descriptions of the status and overall pattern of occupation of the property over the period of their residence. All three use very similar wording in their accounts, which indicates a degree of collusion in their making. Their reference to it being a HMO is to something put to them by the appellant. Finally, as to the letter from Itor Jimenez, I have already pointed out how it is at odds with other evidence and his reference to having lived at the property for over 12 years cannot therefore be correct.

Council correspondence

50. The appellant attaches two items of correspondence from the Council, from its Council Tax team. Neither is of any appreciable weight in supporting his case. The first is dated 24 January 2008 and refers to the period from April 2005 to that date. It refers to tenants who were being billed for Council Tax payments on the presumption that they were the sole occupiers. It is evidence only for the Council's view at that time, itself based on limited evidence, that the property was being used as a HMO. However, it throws into doubt claims made in the affidavits (for example, from his ex-wife) that the appellant saw himself as responsible for paying this tax.

51. I can deal with the second item briefly. It is an email dated 22 March 2018. The context for it is not known and not explained, although it appears to be another reminder of the appellant's liability for Council Tax. It merely points to the existence of a HMO Licence for the property. The evidence is that, from 2014, it has been for a large HMO.

Other material

52. Finally, I deal with the appellant's accountant's evidence, a letter and table of occupation. The letter is of little consequence as its assertion that the agreements on their own account confirm its continuous use for 4-6 people is a matter to which I give little weight, for reasons I have gone into in dealing with the agreements and related evidence.

53. As for the table, its authorship is unclear and I have concerns about its accuracy. There is no evidence from other sources to support the entries regarding length of stay, continuity of occupation of rooms or even of the identities of some tenants, for example, Gintautas Svarcukas (Sep 2009-Mar 2010). Ms Poluszna is recorded as resident from 2008 to 2013 whereas, in her affidavit, she says she was resident only to 2010. It shows some correlation with the dates of the various tenancy agreements as regards individuals identified against the various rooms. However, taking 2016 as an example, it is plainly at odds with the Council's evidence as to the number of rooms, raising further concerns that the appellant has been selective in presenting evidence. These reservations incline me to attach limited weight to it as giving an authoritative account of how the property was occupied.

[8] Betherika Chauhan, Jagoda Posluszna and Zygimantas Mecionis

Conclusions

54. On the balance of probabilities, I have concluded that a *sui generis* HMO use of the property, accommodating 7 people or more, was taking place in 2016. The evidence in relation to the Council's enforcement investigations and the appellant's actions and questionable explanation for some of them in response to it, in the light of the lawful use now claimed, is persuasive. That is in spite of seemingly contradictory evidence as to its use given in the PCN, a likely explanation for which I have given.

55. Accordingly, given the date of the application, the claimed existing use as a HMO cannot be lawful as it contravenes the requirements of an enforcement notice in force covering use of the property as a HMO. The notice was based on sound evidence, not challenged by the appellant. Nevertheless, the evidence in support of the claimed lawful use has the potential to show a period of 10 years' continuous use to which, if lawful, the use of the property could revert notwithstanding the notice. While the terms in which it is framed, a Class C4 HMO use, preclude the grant of a LDC based on that description, I could modify the description of the use to refer simply to HMO housing between 3 and 6 persons. Accordingly, I have assessed the evidence in support of such a claim.

56. Taken either alone or in combination, the bank statements and tenancy agreements cannot act as reliable evidence either for a continuing unbroken use as a HMO over the period in question or for a consistent limitation on the numbers of occupiers at the property. The overall numbers of tenants could have been from anything from 2-3 to the 9 that the Council found in 2016. As for the other supporting evidence, I attach little weight to it, for the reasons given. None of it is particularly helpful to the appellant's case and much of it appears to have been "tailored" to support his case rather than provide an accurate factual account of events.

57. Taken in the round, I find that the evidence submitted by the appellant, though large in volume, falls some way short of being sufficiently precise and unambiguous to justify the grant of a LDC on the balance of probability, for the reasons I have given.

58. Accordingly, I conclude that the Council's refusal to grant a LDC in respect of the existing use of a dwelling as a House in Multiple Occupation Use Class C4 was well-founded and that the appeal must fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act.

C M Hoult

INSPECTOR