



Appeal Decision

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2020

Appeal Ref: APP/P4605/X/20/3252081

399 Boldmere Road, Sutton Coldfield B73 5EX

- 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 Ms P Towers against the decision of Birmingham City Council.
 - The application Ref 2020/01690/PA, dated 26 February 2020, was refused by notice dated 27 April 2020.
 - The application was made under section 192(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 as a House in Multiple Occupation (HMO) occupied by 7 residents (Sui Generis).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application form does not describe the proposed development sought by the LDC under s192 of the Town and Country Planning Act 1990 as amended (the Act). Although there appears to be no agreement regarding the description used by the Council in its decision notice, it has been quoted on the appeal form. I shall therefore consider this appeal as described by the decision notice and appeal form and, for clarity, I have used this description in the header above.
3. Section 192(2) of the Act indicates that if, on an application under that section, the local planning authority is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it shall issue a certificate to that effect. In any other case it shall refuse the application.
4. In an appeal under s195 of the Act against the refusal of an LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the facts and on relevant planning law. The standard for the evidence is one of balance of probabilities. No site visit was made in this case because the appeal turns on the interpretation and application of relevant law.

Main issue

5. This is whether the Council's decision to refuse to issue an LDC was well-founded. The decision turns on whether an increase from 6 to 7 residents

occupying the property would result in a material change of use from a C4 HMO to a large HMO (*sui generis*) and thus constitute development, which would require express planning permission.

Reasons

6. 399 Boldmere Road is a terraced property which the Council accepts has a lawful use as a 6 person HMO falling within Class C4 of the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO). The property has an existing layout that provides 2 bedrooms, a shared kitchen, a communal lounge and a bathroom on the ground floor. Within the first floor there are 3 further bedrooms and a sixth bedroom is located in the attic space. Each bedroom is provided with private bathroom facilities. From the evidence before me, it is not clear whether a bedroom would be 'doubled-up' or whether the communal lounge would be converted to accommodate the seventh resident.
7. Section 55(1) of the 1990 Act defines the meaning of development which includes "the making of any material change in the use of any buildings or other land". Therefore, if there would be a material change in the use of the appeal property, then express planning permission is required. Case law¹ confirms that a material change of use only occurs when there has been a change in the character, nature and intensification of the use. Therefore, whether a change of use has occurred is a matter of fact and degree for the decision-maker and this in turn depends on the merits of each individual case.
8. The appellant argues that a change of use from a C4 use to a use as a large HMO (*sui generis*) is not necessarily material in planning terms. That is a correct statement of principle. When considering whether a change of use is material, the question is whether there is some significant difference in the character of the activities undertaken as a matter of fact and degree.
9. The proposed use of the property would mean that the planning unit would remain a residential property occupied as an HMO, albeit a large HMO, falling outside of the confines of the UCO. The intensification of an existing use can, but will not necessarily, amount to a material change of use: what is at issue is whether the extent and nature of the change would amount to a change in the *character* of the existing use. In order to assess the materiality of any change of use, it is necessary to be clear that what is to be compared, in deciding whether there would be a material change of use, is the present use and the proposed use. It is not sufficient to claim that some theoretical increase in the number of people who live in a building would be unlikely to make any significant difference.
10. The impact of the use on other premises is also a relevant factor. It is necessary to consider both what would happen on the land and its impact off the land when deciding whether the character of the use would change. Thus, off-site effects are a material factor. What must be determined is whether the increase in the scale of the use would reach the point where it would give rise to such materially different planning circumstances that would, as a matter of fact and degree, result in a change in the definable character of the use that would amount to a material change of use of the planning unit.

¹ 1. Including *Hertfordshire CC v SSCLG* [2012] EWCA Civ 1473 and *Blum v SSE* [1987] JPL 278

11. The plans show the existing layout of the property, and based on the evidence that is before me, the property is currently occupied by 6 individuals occupying the 6 bedrooms and sharing the communal space provided for by the lounge and kitchen. However, there are no plans for the proposed use and no details regarding how the seventh resident would be accommodated.
12. In these circumstances, the proposed increase in the number of residents would either exceed the number of bedrooms or result in the loss of a room that currently provides a shared space for the residents. Accommodating an additional person in either of these ways would lead to a more intensive use of the appeal property. Increasing the number of residents from 6 to 7 would be likely to change the levels of noise and disturbance currently experienced both within the property and in the locality.
13. Whether an additional resident would share an existing bedroom or whether the communal lounge would be re-allocated as a seventh bedroom, the increase in the number of residents and the subsequent reduction in the level of internal space would diminish the quality of the living environment for the residents. There would be a marked change from comfortable living conditions as more residents share the same space, with potentially fewer facilities and a communal floor area shared by more people. Additionally, with the potential loss of the communal lounge and greater pressure on the use of the kitchen, which, as indicated on the plans, is limited in size, there would be an increased likelihood of residents resorting to their bedrooms for meals.
14. In this instance, the pressure that an additional resident would put on available space could also result in the use of the individual bedrooms broadening to become living rooms as well, providing both living and sleeping space. This would change the pattern of accommodation and diminish the living standards and conditions for the occupants within the property. This, in my opinion, would be sufficient to constitute a definable change in the character of the existing use.
15. The appeal property is neither in use by a group of residents forming a single household, nor situated within an area that is predominantly characterised by similarly occupied dwellings. 'Comings and goings' generated by the additional person, be it themselves, their friends and family who may visit or even deliveries of goods and services, would be likely to increase levels of activity at the property. Any such increase in activity would add to noise and disturbance in the area associated with vehicular and pedestrian movements in the locality and within the property which, being a terraced house, has neighbours within close proximity on either side.
16. A further potential effect of adding another occupant to the property that comfortably accommodates 6 individuals, without clarity on how that might be done without diminishing living conditions within the property, is that residents might spend less time in the house, due to crowding and lack of facilities. The increased occupancy could well result in a cumulative increase in activity through 'comings and goings' of all residents, leading to an increase noise and disturbance for residents of the appeal property and occupiers of neighbouring dwellings within the locality.
17. Based on the circumstances in this case and on the balance of probabilities, an additional resident would not be *de minimis* but would represent a material change to how the property is used by the residents and in the pattern of

movements of those residents. The level of activity would be materially greater and more harmful in this location, which is not characterised by properties used in a similar way. In my judgment there would be a definable change in the character and nature of the use of the land and therefore a material change of use of the property would occur for which planning permission would be required.

Conclusion

18. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the property as an HMO for 7 residents was well-founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

S Hanson

INSPECTOR