



Appeal Decision

Inquiry held on 11, 12 & 13 October 2023 & 20 November 2023

Site visit made on 20 November 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2024

Appeal Ref: APP/P4605/C/22/3293098

3 Wye Cliff Road, Handsworth, Birmingham B20 3TA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Shiraz Ali against an enforcement notice issued by Birmingham City Council.
 - The notice was issued on 18 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the Unauthorised change of use from C3 single dwelling house to 9 bedroom supported accommodation (Sui Generis) in the approximate position marked in green on the attached plan.
 - The requirements of the notice are to: Cease the unauthorised use of the site as a 9 bedroom supported accommodation and revert to a C3 single dwellinghouse.
 - The period for compliance with the requirement is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - At paragraph 3, the deletion of the words 'change of use from C3 single dwelling house to 9 bedroom supported accommodation (Sui Generis) in the approximate position marked in green on the attached plan.' and the insertion of 'the Unauthorised material change of use to 9-bedroom House in Multiple Occupation (defined as a property rented to at least three people who are not from one 'household' but share facilities such as a bathroom and kitchen) with support provision (Sui Generis) shown edged red on the attached plan'.
 - At paragraph 5, delete 'as a 9 bedroom supported accommodation and revert to a C3 single dwellinghouse' and insert 'Cease the use of the site as a House in Multiple Occupation and cease the support provision.'
 - At paragraph 6, delete '6' and insert '12' as the period for compliance.
2. Subject to the corrections and variation above, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

3. An application for costs was made by Mr Shiraz Ali against Birmingham City Council. This application is the subject of a separate decision.

Preliminary Matters

4. All witnesses gave evidence under affirmation.
5. The Inquiry sat for three days in October and was resumed for a single day in November to allow further evidence to be provided¹. The Council provided an updated response to the appellant's costs application in writing during the Inquiry. After hearing all the evidence and closings, I adjourned the Inquiry on 20 November 2023 and kept it open to allow the applicant to respond to Council's costs response in writing. The Inquiry was closed in writing.
6. Since the appeal was made, a revised National Planning Policy Framework (the Framework)(December 2023) has been published. The document has not raised any new matters which are determinative to this appeal.

Matters concerning the notice

Whether the notice is a nullity

7. The appellant raised concern that the notice doesn't refer to certain policies which the Council cite within its statement of case. The appellant asserts that if a notice does not specify all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice then the notice is a nullity, in the same way that it would be if it failed to specify a date for compliance or a period for compliance.
8. Section 173(10) of the Town and Country Planning Act 1990 (as amended)(the Act) states 'An enforcement notice shall specify such additional matters as may be prescribed,...'. Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 (the ENAR) states an enforcement notice issued under section 172 of the Planning Act shall specify- (a) the reasons why the local planning authority consider it expedient to issue the notice; (b) all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice.
9. The reasons for enforcement action are matters for the Council. Their purpose is to inform the appellant of the objection to what has been done. Section 172(1) states that the local planning authority may issue a notice where it appears to them (a) that there has been a breach of planning control; and (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
10. As held in *Koumis v SSCLG* [2013] EWHC 2966 (Admin); [2014] EWCA Civ 1723; [2015] JPL 682, given the breadth of the statutory power to correct errors on appeal to the Secretary of State, the *Miller-Mead*² approach to nullity should be confined to those cases where the failure to comply with the statutory requirements in section 173 is apparent on the face of the enforcement notice itself.
11. In this case, the notice does not fail to comply with the statutory requirements on its face: the notice sets out the reasons why the Council considered it expedient to issue the notice and the policies and proposals in the development

¹ The draft document 'Towards a supported housing needs assessment for Birmingham: Estimating local supported housing needs'.

² *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196

plan which were relevant to its decision to issue the enforcement notice. It is therefore not a nullity.

12. The appellant raises questions as to the Council's consideration of expediency, if it has not had regard to one or more parts of the development plan before determining to issue the enforcement notice. However, I have no jurisdiction to determine whether a local planning authority has complied with section 172 of the Act. Challenge as to whether it was expedient for the Council to issue the enforcement notice should have been pursued by way of judicial review.

The allegation

13. The appellant suggests that the description of the allegation does not accurately describe the nature of the use. It is asserted that it is clear from the evidence submitted there is no element of on-site or residential support or warden or similar (akin, for example, to sheltered accommodation) and that the character of land use is that of a House in Multiple Occupation (in that residents have their own lockable front doors but share communal cooking and washing spaces).
14. During the Inquiry, the Council agreed it is necessary to correct the breach and confirmed it considers 'Without planning permission, the unauthorised material change of use from C3 single dwelling house to 9-bedroom HMO (Sui Generis)' and a corresponding requirement to 'cease the use as a HMO' to be the least problematic, as it allows for a step which adequately prevents any alternative HMO use being reverted to.

Is it an HMO?

15. I saw that each resident has their own individual bedroom, with access to shared facilities and space, including the kitchen, bathrooms and garden. Section 254 of the Housing Act 2004 sets out the meaning of "house in multiple occupation" (HMO) for the purposes of that Act. Schedule 14 of the Housing Act sets out buildings which are not HMOs for the purposes of this [sic] Act, which includes a registered provider of social housing. There is a Registered Provider for the property, Sustain UK and so, for the purposes of the Housing Act, it is not a HMO.
16. In defining Class C4 houses in multiple occupation³, the Town and Country Planning (Use Classes) Order 1987 (as amended)(the UCO) uses the definition of a "house in multiple occupation" used in the Housing Act 2004, with the exception that it does not include a converted block of flats to which section 257 of the Housing Act 2004 applies. Although the UCO uses the definition set out in the Housing Act, as modified within the UCO itself, it is not defined within the Town and Country Planning Act 1990 (as amended)(the Act).
17. The property is a house, which is occupied by multiple households. Policy DM11 of the Development Management in Birmingham Development Plan Document (2021)(the DPD), which both parties agreed applies to the appeal scheme, defines HMOs as a property rented to at least three people who are not from one 'household' but share facilities such as a bathroom and kitchen.
18. While the appeal property is not a HMO for the purposes of the Housing Act, using the term to describe the activities within the site enables the appellant to

³ Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

understand what they have done wrong. It is clear from my decision that I am not adopting the definition of an HMO within the Housing Act.

19. In the interests of clarity, I shall use the term 'house in multiple occupation' rather than 'HMO' and shall describe the term using the definition contained within policy DM11 of the DPD. Since the parties both agree that policy DM11 applies in this case, there would be no injustice to either party in including this definition in the allegation.

What is meant by the term 'supported accommodation'?

20. On the ground floor there is an office, which the appellant advised is staffed 5 days a week. A Support Manager is based at the site, with Support Workers who also attend the site present between 10am-3pm during the working week. Support Workers assist occupants of the property in filling out forms and in securing any further support from outside agencies. If occupants need support outside of these times, occupants are provided with the number of their Support Worker.
21. Occupants are placed at the site because they are need of such support and the residents typically have protected characteristics for the purposes of the Equality Act 2010. The appellant explained during the Inquiry that the purpose of the support is to help the occupants live independently.
22. The UCO defines "care" as personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment. It is not suggested that the nature of the accommodation provided would fall under C2 and I would agree that while support is provided, the support does not constitute personal care in this case.
23. The Council raised concern about the inclusion of 'support provision' within the allegation and requirement, as removing the support element would ensure compliance with the notice. The Council suggests the inclusion of the term '*Sui Generis*⁴' to address this concern, so that the allegation reads 'Without planning permission, the Unauthorised material change of use from C3 dwelling house to 9-bedroom HMO (*Sui Generis*)' with the corresponding requirement to 'cease the use of the site as an HMO'.
24. However, *Sui Generis* is a Latin term meaning 'of its own kind', it does not describe the support aspect of the use. When asked how vulnerability (of the occupants) relates to behaviour, Mr MacGregor (IM) advised they (occupants) can be 'more volatile'. While the people occupying the premises will change, from the evidence, it appears the occupants' need for support has led to off-site impacts, with occupants resorting to reliance on the police to resolve disputes or exhibiting behaviours which triggers a police response.
25. In my view, the need for support provision is part of the character of the use and so should be identified in the allegation. While I understand the Council's concern that compliance could be achieved simply by withdrawing the support provision, I consider requiring the support provision to cease would address this concern.

⁴ A Latin expression that means 'of its own kind'.

26. The appellant suggests deleting reference to 'from C3 single dwelling house' and 'in the approximate position marked in green' and inserting 'shown red', so that the allegation reads 'Without planning permission, the unauthorised material change of use to 9 bedroom HMO (*Sui Generis*) shown edged red on the attached plan.'
27. While it is good practice for an enforcement notice alleging a material change of use to identify the previous use, it does not render the notice invalid or a nullity if it does not. The plan attached to the enforcement notice shows the appeal site edged in red. I consider correcting the allegation by deleting reference to C3 dwelling house and deleting reference to 'green' can be done without causing injustice to either party.
28. I shall correct the notice as set out above.

Ground (d)

29. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. In an appeal under ground (d), the burden of proof is firmly on the appellant, on the balance of probabilities. As established in *Gabbitts v SSE & Newham LBC* [1985] JPL 630, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
30. Section 171B of the Act sets out that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. For the appeal to succeed under ground (d), the appellant would need to show, on the balance of probabilities, that the material change of use occurred on or before 18 January 2012⁵ and, if so, that it continued without significant interruption for at least 10 years thereafter.
31. As established in *Swale BC v First Secretary of State* [2005] EWCA Civ 1568, a lawful use must be 'affirmatively established'. A use can only become lawful if it continues throughout the ten⁶ year period, to the extent that the Local Planning Authority could have taken enforcement action at any time⁷. Whether any break in occupation, for example for redecoration/renovation or changeover between tenants/occupiers, resulted in an interruption in continuous use will be a matter of fact and degree.

Before December 2011

32. The appellant states they purchased the property in November 2003 with another owner and it has remained in their ownership since then. Prior to their purchase of the site, it had been in use as a private dwelling with 10 bedrooms. Between November 2003 and 1 July 2005, the property was adapted for letting and from 2 July 2005 to 30 June 2006, the appellant states they let the property for student accommodation. Between January 2007 and June 2009, the appellant states they let the property via Direct Connection (Birmingham) Ltd to up to 10 asylum seekers.

⁵ Namely 10 years prior to the issue of the enforcement notice.

⁶ The relevant immunity period

⁷ *Thurrock BC v SSETR* [2002] EWCA Civ 226 and *Swale BC v FSS & Lee* [2005] EWCA Civ 1568; [2006] JPL 886, cited in *Islington LBC v SSHCLG & Maxwell Estates* [2019] EWHC 2691 (Admin); [2020] JPL 532

33. The appellant let the property to Concept Housing & Support Limited under a Company Letting Agreement, dated 22 June 2009, for the term of thirty-six months, commencing on 26 June 2009. The Council's evidence points towards Concept Housing & Support Limited using the property to accommodate 16 – 18 year olds. The Council suggests the use of the property by Concept Housing & Support Limited would be considered to fall within Use Class C2, Residential Institutions and has referred me to the case of *North Devon DC v FSS & Southern Childcare Ltd* [2003] JPL 1191.
34. I have no substantive evidence to dispute the Council's case that the property was in C2 use or that such a use was materially different to the previous HMO use of the site. The appellant suggests the use of the site by Concept is before the relevant period. While immunity can accrue during any ten-year period, the appellant has focussed on the ten-year period prior to the issue of the enforcement notice and so shall I.

December 2011 – 30 June 2012 : TLC

35. From December 2011, the appellant states they let the property to Theo Langston Care (TLC) and from July 2012, it was let out to Horizon Supported Care (HSC). Each of these Housing Providers is stated to have worked directly with the Registered Social Landlord, Sustain UK.
36. As found in *Impey v SSE & Lake District SPB* [1981] JPL 363; [1984] P&CR 157, when considering when a material change of use occurred, the physical state of the premises is very important but is not decisive and actual or intended or attempted use is important but not decisive.
37. The appellant explained during the Inquiry that they went to the property at the end of 2011 to repair, decorate and furnish it prior to tenants moving in. The property is laid out on the ground floor with a lounge and bedroom to the front of the property, a bedroom to the rear, shared bathroom and shared kitchen/diner to the rear. An office is located between the lounge and the rear bedroom. The first and second floors are laid out with 4 and 3 bedrooms respectively, with further shared bathroom facilities on the first floor.
38. The appellant has provided a copy of a tenancy agreement for letting a HMO dwelling house, dated 30 December 2011, with TLC for a period of 12 months, commencing on 3 January 2012. While the document is signed by the appellant but not on behalf of TLC, the appellant confirmed during the Inquiry, under affirmation, that TLC took the contract.
39. Council Tax information provided by the Council shows Concept Housing as the liable party for the property until 30 June 2012. However, the appellant confirmed during the Inquiry that Concept Housing lost their contract in late November 2011 and gave the keys back some time in November or December. During XX, JF conceded the Council Tax information is internally inconsistent, which significantly limits reliance which can be placed upon it.
40. IM states that the appeal property was first used to place tenants in on 16 January 2012. The appellant states that they visited the site three or four times while TLC used the property, including in January 2012 and May or June 2012. However, the appellant wasn't sure how many people were occupying the property during this period as they didn't speak to any tenants and stated

under Cross Examination (XX) that they did not manage the property during that period.

41. Remittance slips have been provided for the property, which include the period TLC used the property. During the Inquiry, IM confirmed that only tenants who are able to claim housing benefit are housed at the property. However, the remittance evidence provided by the appellant appears to show housing benefit payments for only one person in the property between 16 January 2012 and 6 May 2012. Although the remittance slips suggest the property was occupied in some way, they do not show it was occupied by 9 individuals.
42. IM advised that when a new housing provider starts, it can take a number of months for housing benefits to come through. However, if this were the reason the remittance slips appeared to show payments for only one person between 16 January 2012 and 6 May 2012, I would expect to see some evidence of such payments in later documentation. It is not.
43. While business records may only need to be retained for six years for tax purposes, it seems odd the appellant would retain evidence which shows housing benefit for one individual going back to the first half of 2012, but not others.
44. IM suggested during the Inquiry there is a substantial volume of remittance documents. However, while submission of an attic's worth of remittance documents to the Inquiry would be disproportionate, if the evidence were available, it would be reasonable to expect remittance documents showing benefit payments for each occupant over the disputed periods.
45. Although the authority administering Housing Benefit claims is Birmingham City Council, in a legal ground of appeal the burden of proof is firmly on the appellant. Furthermore, if the appellant believes the Council holds such information, it was open to them to request it, as an interested party did for the years 2017 to 2020.
46. IM suggested it is very unlikely that a 9 bedroom property would only be occupied by one person. However, even if I were to accept this, it cannot be assumed the property was therefore occupied by 9 individuals in 2012, even if there is currently evidence of need for supported housing. Properties can have varying levels of occupation for all sorts of reasons. Significantly, IM confirmed during XX that he was not involved in the management of the property during 2012 and so is unable to provide a first-hand account of its management.
47. A site inspection was carried out by Mr Fletcher (MF) in respect of the site on 16 March 2012. MF suggests from what they saw, the property was not in use, as they did not get a response when knocking at the front door. While no-one answered the door, this of itself does not show that the property was empty. I accept there may be a number of reasons as to why no-one answered the door despite the premises being occupied.
48. However, although MF was unable to gain entry to the property, he confirmed that he did not see a furnished bedroom or a lounge when looking through the front windows. Although contemporaneous notes of the visit have not been provided, Mr Fox (JF) confirmed during XX that details of the visit were taken from the Council's computerised log, which MF confirmed would have been

input after the site visit. The computerised log is therefore likely to provide an accurate account of the visit undertaken by MF.

49. I consider it unlikely furniture would be removed from a room each time an individual moves out, even if the ground floor bedroom was vacant for a period of time. Had the property been in use as a 9 bedroom HMO at that time, I would therefore expect MF to have seen furniture in the ground floor bedroom and lounge. The appellant advised that he furnished the rooms for TLC but was unable to explain why the front two rooms were not furnished when MF visited the site in March, as he does not know what TLC did in March.
50. JF described the Council's enforcement service as reactive. MF couldn't recall what concerns had been raised regarding the property but confirms that he had a discussion with a neighbour, who is stated to have believed the property to be a hostel, but that they had not seen anybody entering or exiting the property for a couple of weeks. While this points towards the property having been occupied in some way after December 2011, it does not show it was occupied by 9 individuals, or even multiple individuals.
51. The appellant suggests the visit by MF must have been in response to a complaint regarding use, since planning enforcement visited. However, while one person's occupation of a property may be unlikely to generate complaint to a local planning authority, this will entirely depend upon the nature of the complaint and the activities being carried out.
52. When asked during XX how many people were occupying the property in January 2012, the appellant advised he was not sure, as he didn't speak to any tenants and suggested there could have been none or 9. The appellant went on to advise that he didn't know how many tenants occupied the property in February, March, April or May of that same year.
53. An HMO licence, which was issued in 2009, was varied by the Council on 19 August 2013 to vary the permitted number to 9 households or 9 persons. The Council's HMO Licensing Officer advises determination of an application is primarily based on the information provided by the applicant and a site visit only carried out where the processing officer felt further investigation/proof was required. An HMO licence is therefore not determinative that a property has been used as such.

July 2012 to 17 October 2015

54. A senior enforcement officer visited the property following an enquiry in 2015 that it was in use as an unauthorised large HMO. The officer is stated as inspecting the property on 6 May 2015 and confirmed its use as a 9 bedroom HMO. However, this provides a snapshot in time and does not show continuous use.
55. The appellant was invited to submit a planning application and on 17 August 2015, the appellant submitted a planning application for the retention of use as a 9 bed HMO, reference 2015/06749/PA. The application was withdrawn on 8 October 2015.

18 October 2015 to 1 May 2017

56. The Council suggests there is a clear gap in the appellant's evidence between 18 October 2015 and 1 May 2017. During this period, Sustain UK was no longer

the Registered Provider and whilst the appellant assumes it was one of 5 providers in Birmingham at the time, the appellant was unable to confirm which provider it was.

57. Mr MacGregor (IM) confirmed during the Inquiry that to house vulnerable people in supported accommodation, you need both a Home Provider (who provides and manages the Home) and a Registered Provider (who engages with the local authority and collects housing benefit). Tenancy lists, site inspection notes and remittance documents have not been provided for this period.
58. The appellant suggests the site continued to operate as a 9-bed HMO, however, from the appellant's own evidence, it seems they had limited involvement in the running of the property during this period. Although the appellant asserts the property was in use as a 9 bed HMO, the reality is, they simply don't know how it was used for a significant period of time. They assume it was used to accommodate 9 individuals for some or most of the time, but this, to my mind, does not discharge their burden of proof⁸.

May 2017 to date enforcement notice was issued

59. The appellant advised during the Inquiry that they got contractors in between October 2016 and March 2017 to do some work in the property and renovate a couple of bathrooms. The appellant states that they wanted to be more involved in the running of the property and took control of the property in 2017, with Secure Supported Housing becoming the Home Provider.
60. The appellant has provided inspection records for dates between 2017 and 2021. An 'initial' inspection, dated 20 March 2017, details the number of beds as 9, with the number of residents as 3. It is identified that there is one washing machine and that an extra washing machine is needed when there are more than 5 residents.
61. It would seem, from the appellant's own evidence, that any works to the property to lay it out as a 9 bedroom HMO were internal, limited to a lick of paint and the provision of some additional furniture. While the appellant's intention may have been for the property to have been let to 9 occupants, and indeed during the Inquiry the appellant outlined how they prepared the property, the evidence does not show that it actually was occupied by 9 individuals.
62. I don't doubt that the appellant laid the property out with 9 bedrooms over three floors, however, how the property has actually been used is also important. A property which is laid out with 9 bedrooms but only ever occupied by say 2 or 3 individuals is likely to generate very different off-site impacts by virtue of their comings and goings, noise, demand for parking and so on and cannot be said, in my view, to constitute use as a 9 bedroom house in multiple occupation with support provision.
63. I find the appellant's evidence is not sufficiently precise and unambiguous and does not show, on the balance of probabilities that the use of the property as a 9 bedroom House in Multiple Occupation with support provision occurred on or before 18 January 2012 and continued without significant interruption for at least 10 years thereafter. Consequently, the appeal under ground (d) must fail.

⁸ Which is on the balance of probabilities.

Ground (a)

64. The appeal under ground (a) is made on the basis that planning permission ought to be granted for the matters stated in the notice as constituting the breach of planning control.

Main Issues

65. The main issues of the appeal are:

- The effect of the appeal scheme on the provision of family accommodation within the area;
- The effect of the appeal scheme on crime and a fear of crime and disorder in the area; and
- The effect of the appeal scheme on the amenities of occupiers of dwellings in the vicinity of the appeal site with regards to noise and disturbance.

Reasons

Family housing provision

66. Policy DM11 of the Development Management in Birmingham Development Plan Document (2021)(DPD) supports proposals for the conversion of existing dwellinghouses to HMOs where they would, amongst other things, not result in the loss of an existing use which makes an important contribution to other Council objectives, strategies and policies.

67. Within the DPD, HMOs are defined as a property rented to at least three people who are not from one 'household' but share facilities such as a bathroom and kitchen. Paragraph 4.24 of the DPD advises where there are particular shortages of large family accommodation, the City Council will be sensitive to any such need when considering proposals for HMOs which would result in the loss of such housing.

68. Since the appeal was lodged, the Council has adopted its Houses in Multiple Occupation Supplementary Planning Document (SPD), which suggests proposals comprising the conversion of existing C3 dwellinghouse to an HMO must demonstrate there is an established lack of demand for the single family use of the property concerned based on local housing market circumstances at the time and suggests evidence the property has been marketed should be provided. No evidence of any marketing exercise has been submitted through this appeal.

69. I have been provided with a copy of the Housing Strategy 2023-2028 which has three priorities, including priority 3: 'Neighbourhoods are enhanced and the quality of existing housing is improved'. The Housing Strategy advises that the number of families with dependent children is more significant in Birmingham than other core cities which means there is a need for more accommodation options for large families.

70. The Housing Strategy goes on to advise that the growth of Houses of Multiple Occupation (HMO) accommodation and exempt accommodation means the city has seen a significant loss in privately rented family homes. One of the

indicators for Priority 3 is 're-profile 11,000 units of exempt supported accommodation into family homes.

71. The Aston, Newtown and Lozells Area Action Plan (the AAP)(July 2012) notes that the Council's Strategic Housing Market Assessment (SHMA)(2013) identified a demand for larger affordable housing with four or more bedrooms and that the shortfall in family housing, should be addressed within the context of creating mixed and balanced communities. In my view, a dwelling which provides family accommodation has the potential to make an important contribution to the Housing Strategy vision of providing the right home, in the right place, at the right time and the AAP aim of creating mixed and balanced communities.
72. The SHMA indicated a need for accommodation of all sizes. However, when comparing completions by number of bedrooms, compared to the suggested SHMA mix, the Council shows that there has been a shortfall of -3,485 units with 4+ bedrooms between 2011 and 2021. Since the appeal was submitted, the Council has published the Birmingham Housing and Economic Development Needs Assessment, April 2022 (the HEDNA), which provides evidence regarding the overall need for housing, and type and mix of housing needed, to inform an update to the Local Plan.
73. The Council has drawn my attention to table 8.34 of the HEDNA, which sets out Housing Mix Starting Point by Sub-Area based on Modelled Outputs only. The document suggests, at paragraph 8.81, the Council can use the table (8.34) as a starting point for housing mix negotiations on sites in each sub area. For Perry Barr, the total suggested housing mix for 4+ bedrooms is 15%. However, this is for new housing provision, and does not deal with those properties which are lost, whether by material change of use to an HMO or something else.
74. The appellant points out that the starting point for 1-bed is 12%, however, 1 bedroom properties are less likely to be susceptible to loss by material change of use to something else. Furthermore, the evidence provided by the Council shows there was a significant surplus of 1 bed and 2 bed completions compared with 3 and 4+ bed, suggesting smaller property types are more likely to be provided in the future.
75. The HEDNA cautions against interpreting differences in the stock profile as indicating particular surpluses or shortfalls of particular types and sizes of homes and advises that understanding the role and function of areas is important. The AAP advises that the predominance of Victorian terraced housing means that there is a lack of housing choice in the area, especially for large families.
76. The chair of the Birchfield Residents Action Group (BRAG) advised during the Inquiry that the group was formed to try and get HMO's removed and provide family housing. Although the chair was unable to quantify the number of HMOs in the area, it seems unlikely to me that such a group would bother to send a representative to an inquiry, were the need for family housing not still an issue in the area.
77. Furthermore, a petition, signed by a number of individuals, advise there is a real lack of family dwelling houses in the area. While not all signatories to the petition live on Wye Cliffe Road, many appear to be Birmingham addresses, and are therefore likely to have been signed by individuals who are familiar

with the area. Although anecdotal, this points towards there being a need for family housing in the area.

78. Furthermore, I have no substantive evidence to show that BRAG or the signatories to the petition are wrong: the appellant has not shown that there is no demand from families for the appeal property through a marketing exercise, as recommended by the SPD.
79. The Council's position is that one property can make an important contribution and used the analogy of 'death by a thousand cuts'. Both the HEDNA and the Housing Strategy raise concern regarding the need to safeguard housing to cater for an increasing number of families in the city. Moreover, the HEDNA details the Council's issuing of a City-Wide Article 4 direction, which restricts permitted development in this case from housing to small HMOs [sic]. It notes that there was a need to safeguard housing to cater for the increasing number of families in the city.
80. While the HEDNA suggests properties are more frequently under-occupied than over-occupied or right sized, it advises this is to do with the aging population maintaining the family home and people buying homes larger than their assessed need. This is not, necessarily, an indication that there is not a demand for larger properties such as the appeal site.
81. The Housing Strategy advises there is a property acquisitions scheme in operation to increase the supply available specifically for homeless households. The Council is directly purchasing properties on the open market, focussed on large families. The appellant suggests the fact that they have not approached or considered the appeal property is telling, however, this may be for the simple reason that the property has not been advertised for sale.
82. While the appeal property is unlikely to have been used for occupation by a single family for a significant period of time, from the evidence it appears that the last lawful use of the property was a C3 use and that it was occupied by a family⁹. The material change of use of the property to a house in multiple occupation, has resulted in the loss of this use. Since there appears to be a need for family accommodation in the area, granting permission for the use would conflict with policy DM11(1)(d).
83. The appeal property appeared to be occupied when I visited the site and from the appellant's oral evidence it seems the property is fully occupied. The HEDNA identifies a need for a variety of accommodation, including one bedroom accommodation. Although it does not specifically identify a need for HMO (or exempt) accommodation, it suggests the housing need for those who would ordinarily occupy HMOs can be addressed through further growth in built to let and/or co-living.
84. The Housing Strategy includes some headline figures, such as the number of tenants in social housing with rent arrears over £500 and the number of people with a clearly identified need for affordable housing within the city. While this suggests issues of affordability, such issues may apply to both single persons households and families.
85. While the Perry Barr sub-area has the greatest level of homelessness and concealed households outside of central Birmingham, this may include families.

⁹ Oral evidence given by Mr R.Malook during the Inquiry

Similarly, while the Perry Barr sub-area has the greatest level of need for social/affordable rented accommodation, second only to central Birmingham, this may also include families.

86. I have been provided with a draft document, 'Towards a supported housing needs assessment for Birmingham: Estimating local supported housing needs'. The document refers to applications to join the LPA's housing list each week, with 225 of those being families, and presumably the remaining 275 applications comprising single-person households.
87. While the appellant suggests the data shows the pressing need is for 1 bedroom accommodation, this takes an overly simplistic view and ignores the fact that where a 4 bedroom property is needed, for example, there will be 4 individuals in need of that accommodation. Furthermore, the housing list only captures applicants on the housing register and so does not provide a complete picture of need.
88. Significantly, the Council advise the needs assessment is an emerging document which is still under review and does not ask me to place any weight on it. When reading the document, it is clearly incomplete and while it contains some detailed information, it is not clear what level of scrutiny it has undergone and therefore how robust this information is. I therefore afford it very limited weight.
89. The enforcement notice cannot compel a recipient to revert to a particular use, and, since the appellant's business is concerned with letting residential accommodation for the vulnerable, were the notice to be upheld, they suggest it is more likely that a form of accommodation comprising up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with mental health problems. However, I have no evidence to show this is actually likely since the appellant's business is based upon renting to individuals rather than entire households. I therefore afford this matter very limited weight.
90. The appellant has drawn my attention to a number of permissions which have been granted in Birmingham for HMOs. However, I do not have full details of the permissions granted and do not know whether they are comparable to the appeal scheme before me. I therefore afford this matter very limited weight.
91. For the reasons given above, I find the appeal scheme is harmful to the supply of family housing in the area, contrary to policy DM11 of the DPD, the requirements of which are set out above, and fails to comply with the advice contained in the SPD.

Crime and fear of crime

92. The appeal site comprises a substantial semi-detached property, which is located within a generally residential area. The appeal property is used to accommodate individuals who are classed as 'vulnerable' by the Department for Work and Pensions (DWP), which can include individuals with a mental health condition, drug addiction and homelessness. Referrals can come from prisons, the probation service, police, Councils and self-referral.
93. Following a referral, individuals are assessed to enable a suitable home to be identified, taking account of the area they wish to live in, for example. IM explained during the inquiry that individuals who are located in this type of

accommodation can be chaotic and volatile, though there may be instances where they turn people away, for example, an individual with an arson conviction.

94. Policy PG3 of the Birmingham Development Plan: Planning for sustainable growth (2017)(the BDP) seeks safe environments and policy DM2 of the DPD seeks development which is appropriate to its location and not result in unacceptable adverse impacts on the amenity of occupiers and neighbours, considering, amongst other things, safety considerations, crime, fear of crime and anti-social behaviour.
95. The National Planning Policy Framework (2023)(the Framework) seeks development which creates places where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience. The courts have held that fear of crime and adverse effects on health can be a material consideration (*West Midlands Probation Committee v SSE* (1997)). However, there must be some reasonable evidential basis for that fear.
96. The Council submitted a Section 115 Crime and Disorder Act 1998 Information Request to West Midlands Police. WMP confirmed between May 2018 and November 2021 there were 63 calls for service related directly to the appeal site, which included offences such as burglary, theft, assault and firearm offences. Of the 63 calls for service, WMP categorised 18 as Disorder and Anti-Social Behaviour.
97. Police Sergeant Lampitt (PSL) gave evidence to the Inquiry and advised that police involvement with the appeal property was quite heavy, which means there is repeat demand, not just a one-off call. PSL advised a lot of the incidents relate to occupants, however, some relate to incidents outside the property, and provided details of incidents which have been logged between 23 October 2021 and 1 June 2022.
98. While in many cases the victim may have been a resident, visits by police, including police attending the site in a police car with flashing blue lights are likely to contribute towards a fear of crime in the area. I have been provided by photographs showing police parked outside the appeal property and attending the appeal property, as well as an ambulance. Interested parties allege fighting, an individual armed with a weapon, drug use, and shouting and swearing.
99. The appellant suggests the fear of crime arises because of the identity of specific occupiers, rather than the character of the land use. However, from the evidence provided this appears unlikely. The appellant advised at the Inquiry, 2 of the tenants have lived at the property for around a year and a half, 6 have lived there around a year and one signed a tenancy agreement a week before the Inquiry. The information relating to police reports, however, spans a number of years, during which time the occupants of the property appear to have changed, and is therefore unlikely to relate to a specific occupier or occupiers.
100. I acknowledge that a number of individuals at the Inquiry gave evidence in general terms and did not specifically raise concern about the appeal property. I also acknowledge the appellant has raised concern with the police regarding their attendance at the appeal property and suggests false complaints have

been made which are intended to discredit the property. However, significantly, evidence was given by PSL regarding the appeal property. Furthermore, neighbouring occupants described specific incidents, including finding drug paraphernalia deposited in a rear garden¹⁰, as well as a general concern regarding odour which is alleged to arise from drug use.

101. I have also been provided with a series of photographs which are alleged to show various activities from littering and burning in the back garden, to fighting in the street. A photograph of a man, for example, alleged to have been fighting and coughing up blood, is consistent with the report provided by WMP. Interested parties describe the effect the fear of crime has on their day to day lives, with some individuals avoiding walking past the property.
102. It is suggested the position regarding fear of crime and disorder or anti-social behaviour is no different to a six person C3 use with alcohol or drug-dependent residents. However, PSL advised WMP involvement was not the same as a typical family home and suggested this was due to the number of people living in the building. Tenants are located at the appeal property precisely because they are deemed to be vulnerable. Were I to allow the appeal and grant planning permission, while the individuals who occupy the property may be different, there is no suggestion that this would change.
103. In my view, the fear and concern felt by occupants of neighbouring land is real and relevant to their reasonable use of the land. The appeal scheme is having an adverse effect on the amenity of neighbouring occupants, considering, amongst other things, crime, fear of crime and anti-social behaviour, contrary to policy PG3 of the BDP and policy DM2 of the DPD, the requirements of which are set out above and the relevant expectations of the Framework.

Living conditions

104. Accommodation within the appeal property is laid out over 3 floors, with shared living accommodation generally located on the ground floor and bedroom accommodation on each of the floors. An office is located on the ground floor. To the rear of the property is a generous garden, which is mostly laid to lawn, with a paved area near to the boundary with No 1, laid out with plastic table and chairs.
105. Noise generated by a site can harm amenity, even if it does not meet the threshold of being a statutory nuisance. Although there is no evidence of the Council's Environmental Health team being called to the appeal site, this does not mean the use of the site does not cause noise and disturbance which is harmful to the living conditions of neighbouring occupants. Complaints have clearly been made in respect of the site, whether that is to the police, the Council or a local Councillor.
106. A neighbouring occupant suggests tenants at the property often play loud music from their rooms or vehicles at all times of day or night, causing nuisance and disturbance. During the Inquiry the neighbouring occupant gave examples of occupants being noisy and shouting and explained that during sunny periods, tenants congregate in the back garden, leaving them unable to use their garden.

¹⁰ With photographs provided.

107. The appellant explained they have placed contact numbers on the front door and gave their neighbour email and telephone contact details. Caution is suggested when considering the neighbouring occupant's account, because of alleged animus towards the appellant and occupants of the appeal property. However, the appellant has not suggested any measures, either in terms of the construction of the property or its operation, to minimise the effect of noise on neighbouring occupants. While the appellant suggests they have a complaints procedure, this would not address noise being generated as a result of the normal occupation of the premises by 9 individuals.
108. Although the occupants of the premises share communal facilities, occupants are likely to lead separate lives and so may want access to their own music and television, which they may choose to play or watch at different times in their respective bedrooms and/or communal areas. The property is semi-detached and so noise which is generated in rooms adjoining No 1 in particular, is likely to be heard by occupants of No 1. Music played in the evening, for example, is likely to cause disturbance to neighbouring occupants when they may reasonably expect peace and quiet or be trying to sleep.
109. The appellant has provided me with a report dated 5 April 2021 'Delegated Authorisation to Close Enforcement Case 2015/0238/ENF'. The report confirms that the site has been subject to multiple enquiries and visits across a number of years and advises the case be closed because, amongst other things, the site is [sic] not generating ASB. However, there is no mention of noise and disturbance or whether this was considered prior to submitting the recommendation to close the case.
110. Furthermore, the Council confirms the case was not closed due to renewed concerns raised shortly after from members of the community. The document is a snapshot in time and does not prevent the Council from taking enforcement action.
111. For the reasons given above, I find the appeal scheme has a harmful effect on the living conditions of neighbouring occupants, contrary to policy DM2 of the DPD, which seeks development which does not result in unacceptable adverse impacts on the amenity of occupiers and neighbours, amongst other things.

Planning balance

112. The Public Sector Equality Duty (PSED) as set out under the Equality Act 2010 concerns the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
113. The appeal site accommodates tenants who are determined as vulnerable by DWP, which can include individuals with mental health conditions. The appellant advised during the Inquiry that individuals have been placed at the property, rather than other properties within their portfolio, taking into account their religious beliefs. Occupants of the appeal property therefore have protected characteristics for the purposes of the PSED.
114. I have found that the appeal scheme has resulted in the loss of a family dwellinghouse and causes harm to the living conditions of nearby occupants

as a result of crime and fear of crime and noise and disturbance. I attach substantial weight to these findings against the appeal.

115. Although it may be possible to locate occupants of the appeal site elsewhere in Birmingham, the appeal site is clearly providing living accommodation to those currently living in it, to which I afford moderate weight. The appeal site also provides 3 part time jobs and therefore provides economic benefit, to which I afford moderate weight.
116. Having regard to the legitimate and well-established planning policy aims to meet family housing need and protect living conditions, in my view, the benefits of the appeal scheme are outweighed by the harms I have identified. Thus, having due regard to the PSED, I consider that upholding the notice and refusing planning permission is necessary and proportionate.

Conclusion

117. Thus, for the reasons given above, I find the appeal scheme conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

118. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or as the case may be, to remedy any injury to amenity which has been caused by any such breach.
119. Given the requirements of the notice, it is clear that the purpose of the notice is to remedy the breach of planning control. The appellant suggests, had the Council taken enforcement action in 2015 when it was aware of the breach of planning control, the appellant would have been able to revert to a C4 use.
120. An Article 4 Direction has since been issued, restricting permitted development rights in this regard. The appellant suggests this is unfair and requests the requirements are amended to reflect this.
121. Notwithstanding any argument as to whether the appellant would have had a right to revert to a C4 use by virtue of section 57(4) of the Act in 2015, there is no scope to require reversion to a lawful use or that another activity takes place. Cessation of the use would remedy the breach.
122. Given the above, I agree it is necessary to vary the notice to delete the requirement to revert to a C3 single dwelling house. The appeal under ground (f) succeeds to this extent.

Ground (g)

123. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant suggests 18 months is necessary to ensure suitable alternative accommodation.
124. Although the majority of occupants of the appeal property are already beyond their initial six-month tenancy period, meaning they could be asked to leave

with two months' notice, these are individuals with potentially complex needs, and so re-housing all 9 tenants may be difficult. While the appellant or Sustain UK Ltd may have vacancies in other properties they control, finding a property which meets the needs of an occupant may be more challenging.

125. I am mindful that extending the compliance period is likely to result in the harms identified above continuing. While 18 months is, in my view, excessive, I consider it would be reasonable and proportionate to extend the compliance period to 12 months. From the evidence, it seems likely that a number of those currently residing at the property may wish to move on within this timeframe anyway and for those who do not, this would give sufficient time to secure suitable alternative accommodation. The appeal under ground (g) succeeds to this extent.

Conclusion

126. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period specified in the notice falls short of what should reasonably be allowed. I shall vary the enforcement notice, as corrected, prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeal on grounds (f) and (g) succeed to that extent.

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Scott Stemp	Of No 5 Chambers
He called:	
Mr Shiraz Ali	Appellant
Mr Ian MacGregor	Sustain UK Ltd
Ms Julia Day	Agent

FOR THE LOCAL PLANNING AUTHORITY

Piers Riley-Smith	Counsel instructed by Zoe Walker, Birmingham City Council
He called:	
Mr James Fox	Acting Principal Planning Enforcement Officer
Mr Peter Barton	Area Planning Manager, Birmingham City Council
Mr Matthew Fletcher	Senior Planning Enforcement Officer
Mr Greg Lampitt	Police Sergeant

INTERESTED PARTIES

Barbara Petris	Chair of Birchfield Residents Action Group (BRAG)
Denise Forsyth	
Raham Malook	
Kiet Duong	
Swahib Malook	

DOCUMENTS SUBMITTED AT THE INQUIRY:

1. Council's opening statement
2. Appellant's opening statement
3. Birmingham Local Development Scheme 2022-2025
4. Statement of Common Ground (SoCG)
5. Email correspondence from Council regarding the SoCG
6. Appeal decision APP/P4225/X/16/3145074
7. Letter from Birchfield Residents Action Group
8. Closing submissions on behalf of the Council
9. Costs response on behalf of the Council
10. Closing submissions on behalf of the appellant