



Appeal Decision

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2024

Appeal Ref: APP/P4605/X/24/3337358

662 Chester Road, Erdington, Birmingham B23 5TE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Carl Bedward (Ridgacre Property Ltd) against the decision of Birmingham City Council.
 - The application ref 2023/05510/PA, dated 10 August 2023, was refused by notice dated 6 October 2023.
 - 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 described as Sui Generis.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development as sought by the application is described in the banner heading above. The Council, in its reason for refusal describe the development as 'Application for a Lawful Development Certificate for proposed use as a House in Multiple Occupation (HMO) occupied by 9 residents (Sui Generis)'. As this more accurately reflects what was clearly sought by the LDC application, I shall determine the appeal on that basis.
3. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers. The parties were contacted regarding this matter and given the opportunity to comment on the appropriateness of the proposed approach. No responses were received.
4. Planning permission for the use of 662 Chester Road as a large (sui generis) HMO was granted on appeal dated 20 December 2021 (Appeal Reference: APP/P4605/W/21/3278681). Condition 02 attached to that decision specifies that the property shall not be occupied by more than eight persons at any one time. The Council refused to issue the (appeal) LDC because the use proposed would fail to comply with the condition and thus the statutory provisions set out in s192 of the Act.

Main Issue

5. The main issue is whether the Council's refusal to issue an LDC for the use of the appeal property as a sui generis HMO for 9 persons was well-founded.

Reasons

6. The appellant argues that the condition does not satisfy all 6 tests as set out by the Planning Practice Guidance¹. This is because to apply a condition to restrict occupancy due to a perceived increase in noise is not reasonable. They suggest the condition should have read “*prevent* the demonstrated unacceptable harm” rather than “*avoid* unacceptable harm”. Accordingly, the condition is deemed to not be reasonable. Furthermore, its relevance is said to be limited and that it does not ‘bite’ when establishing whether a proposed use, such as in this case, would be lawful.
7. Therefore, the appellant considers that the issue is limited to whether the HMO’s use for 9 persons would be a material change of use as set out in Section 55(1) of the Act. A case, however, has not been presented by the appellant to support their view that such an increase in residents at the property would have a material impact. The onus is on the appellant to provide sufficient information to support an LDC application (and appeal) and the test is one of a balance of probabilities².
8. Nevertheless, for the purposes of the Act, uses and operations are lawful at any time by virtue of s191(2)(a) if no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
9. Thus, whether there would be a material change of use would be of no consequence. If the property was being occupied by more than 8 persons, enforcement action could be taken by the Council for failing to comply with a condition subject to which planning permission has been granted.
10. To establish whether or not the condition is reasonable would be best placed with an application made under section 73 of the Act. This can be used to make a material amendment by varying or removing conditions associated with a planning permission. The change must only relate to conditions and not to the operative part of the permission.
11. For the reasons given above and having regard to all other matters raised, I conclude that the Council’s refusal to grant an LDC for a proposed use as an HMO occupied by 9 residents was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR

¹ Paragraph: 003 Reference ID: 21a-003-20190723

² Paragraph: 006 Reference ID: 17c-006-20140306