



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date **3 December 2024**

Appeal Ref: APP/P4605/X/24/3338002

13 St. Edwards Road, Birmingham B29 7DJ

- 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 Mrs Maria Shiu against the decision of Birmingham City Council.
 - The application ref 2023/08277/PA, dated 22 December 2023, was refused by notice dated 26 January 2024.
 - The application was made under section 191(1)(a) and 191(1)(b) 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 in the application form as single-storey rear extension and loft conversion with the installation of dormer window to front.
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Decision

1. The appeal is dismissed insofar as it relates to the existing use of the property as a 7 bedroom large HMO (*Sui Generis*).
2. The appeal is allowed insofar as it relates to the single storey rear extension and loft conversion including front and rear dormer windows, and I attach to this decision a certificate of lawful use or development describing the operations which I consider to be lawful.

Preliminary Matters

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. The use for which an LDC is sought, as described by the appellant, is in the banner heading above. The *reason* for the LDC, as stated in their application form, is for an existing use and that use is described as '*sui generis*'. The description was modified by the council by virtue of s191(4) of the Act, to an '*Application for an LDC for existing use as a 7 bedroom HMO (Sui Generis) for time period in excess of 10 years and single storey rear extension and loft conversion including front and rear dormer windows*'. This description was subsequently used by the appellant in their appeal form. From the presented evidence, this seems to be a more accurate description for what the appellant sought with the LDC application, and it is therefore upon which my decision shall be based.
5. The question being asked in the application for an LDC under section 191(1) is whether the existing use of the building and the building operations which have been carried out are lawful. In respect of both the use of the property and the

building operations, as set out in the modified description of development, section 191(4) of the Act provides that if, on an application under this section, the local planning authority is provided with sufficient information satisfying them of the lawfulness of the use and operations at the time of the application, that is 22 December 2023, they shall issue a certificate to that effect. In any other case they shall refuse the application.

Main Issue

6. The main issue is whether the Council's refusal to issue an LDC was well-founded. In this particular case this turns on:
 - i. whether the appellant can show that the extensions to the property were substantially completed 4 years prior to 22 December 2023, so as to be immune from enforcement action through the passage of time, in accordance with s171B(1) of the Act.
 - ii. whether the appellant can show that the use sought has continued for 10 years prior to 22 December 2023, without any other intervening uses, so as to be immune from enforcement action through the passage of time, in accordance with s171B(3) of the Act.

Reasons

7. In an appeal relating to an LDC, the burden of proving relevant facts rests with the appellant and the test of the evidence is on the balance of probabilities. The appellant's own evidence does not have to be corroborated by 'independent' evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate. This is on the basis that it is sufficiently precise and unambiguous. The planning merits of the matters applied for do not fall to be considered. The decision is based strictly on factual evidence and relevant planning law.

The extensions

8. The Council's Officer Report dated 24 January 2024 for the LDC application refers to *front and rear* dormer windows shown on the plans submitted and approved in 2010 under application reference 2010/05754/PA. It also references images on Google Streetview which show the front dormer to be in place from 2012. The Council states that it considers that the rear single storey extension was built under permitted development rights.
9. In addition to this, a copy of a Completion Certificate from the Council's Building and Consultancy Services for a 'single storey rear extension and loft conversion with installation of dormer window to front' has been supplied by the appellant. This records the plans as having been deposited on 26 April 2011 and a completion date of 10 October 2011. A drawing has been provided which shows the rear dormer and this is entitled 'proposed loft conversion'.
10. The Council considered there to be sufficient evidence to show that the extensions have been in situ for a period in excess of 4 years. Given the presented evidence, I have no reason to dispute these findings.

The use of the property

11. Turning now to the matter of the *use* of the property, the drawing entitled 'proposed loft conversion' as noted above, show that on the ground floor there is a kitchen, lounge and one bedroom. At first floor level there are three bedrooms and within the loft space there is one bedroom and a bathroom. The property is shown to have a total of 5 bedrooms. Being the plans which likely formed part of the Building Regulations application, these show the layout of the property around 2011.
12. A plan to show means of escape and fire precautions for HMOs is dated 29 June 2012 and signed by the West Midlands Fire Service. The plans show the ground floor to have two bedrooms, a kitchen and lounge. The first floor has three bedrooms and a bathroom and there are two bedrooms and a bathroom in the roof space. The property is shown to have a total of 7 bedrooms.
13. Drawings dated 2 November 2021 for a project entitled 'Internal Alterations' show the existing layout as: two bedrooms, a bathroom and a kitchen on the ground floor, three bedrooms and a bathroom on the first floor and two bedrooms and a bathroom in the roof space. The property is shown to have a total of 7 bedrooms.
14. The appellant has supplied copies of the following:
 - Licences for an HMO for 7 households or 7 persons granted by the Council for the periods between:

3 July 2012 and 27 February 2017; and 27 June 2017 and 27 February 2022.
 - Copies of an Assured Shorthold Tenancy Agreement (ASTA) for 7 individuals for the following periods:

from 1 July 2016 to 30 June 2017
from 1 July 2017 to 30 June 2018
from 1 July 2018 to 30 June 2019
from 1 July 2019 to 30 June 2020
from 1 July 2020 to 30 June 2021
from 1 July 2022 to 30 June 2023

No ASTA for the period from 1 July 2021 to 30 June 2022 has been provided.
15. To establish the use of the property as a large 7 bedroom HMO, the evidence must demonstrate that the *use* had commenced by 22 December 2013 and had continued without interruption. While the property may well have been internally organised to provide 7 bedrooms, the evidence in the form of ASTAs shows the use occurring from 1 July 2016 to 30 June 2023. There is also a gap in the evidence for a year, as noted above, and there is also no evidence to show how the property was being used from June 2023 to the date of the LDC application. Furthermore, although copies of HMO licenses, provided under s64 of the Housing Act 2004 and issued for the property show that a licence had been granted for the property in July 2012, licensing law and planning law are

by definition different and different caselaw necessarily applies to each. The fact that the property had a licence to operate as an HMO does not indicate that the property was actually in use as such during the period of the licence.

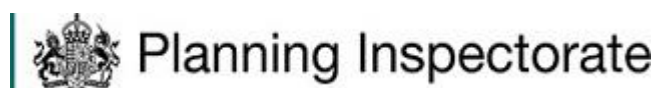
16. Overall, without sufficiently precise and unambiguous evidence, I find that on the balance of probabilities the lawfulness of the existing use of the appeal property as a large 7 bedroom HMO has not been demonstrated. In these circumstances, I am not able to issue an LDC for the use of the property as sought.

Conclusion

17. For the reasons given above and having regard to all other matters raised, I conclude that the Council's refusal to grant an LDC in respect of the single storey rear extension and loft conversion including front and rear dormer windows was not well-founded and that the appeal should succeed in part in that respect.
18. However, I find that the Council's refusal to grant an LDC in respect of the existing use of the property as a 7 bedroom large HMO was well-founded and that the appeal should fail in that respect. Accordingly, I will exercise the powers transferred to me under sections 195(2) and 195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 22 December 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The single storey rear extension and loft conversion, including front and rear dormer windows, are operational development for the purposes of Section 55(1) of the Town and Country Planning Act 1990. Therefore, the relevant time period to gain immunity is four years beginning with the date on which the operations were substantially completed. The available evidence shows that the operational development had been substantially completed for more than four years. It is, thus, lawful according to Section 191(2) of the 1990 Act since no enforcement action may be taken in respect of the operational development due to the passage of time.

Signed

S A Hanson

INSPECTOR

Date: []

Reference: APP/P4605/X/24/3338002

First Schedule

Single storey rear extension and loft conversion including front and rear dormer windows

Second Schedule

Land at 13 St. Edwards Road, Birmingham B29 7DJ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: []

by **S A Hanson**

Land at: 13 St. Edwards Road, Birmingham B29 7DJ

Reference: APP/P4605/X/24/3338002

Scale: Not to Scale

