



Appeal Decision

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 6 December 2024

Appeal Ref: APP/P4605/C/24/3342398

205 Umberslade Road, Selly Oak, Birmingham B29 7SG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Umar Maqsood (Provident Housing Supported Living Ltd) against an enforcement notice issued by Birmingham City Council.
 - The notice was issued on 12 March 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use to a large HMO with 9 bedrooms (Sui Generis) currently being used to provide supported accommodation.
 - The requirements of the notice are to: Permanently cease the use of the Premises as a large HMO (sui generis).
 - The period for compliance with the requirements is 6 (six) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. 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.
3. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO) provides for the use of a dwellinghouse as a "house in multiple occupation" (HMO) by not more than 6 residents; that is up to 6 unrelated individuals who share basic amenities such as a bathroom and kitchen (a small HMO). The use of a dwellinghouse by more than 6 residents not living together as a household is "sui generis" or in a use of its own. The notice alleges the property is in a sui generis use as a large HMO, accommodating 9 residents.
4. The change of use from C3¹ to C4 and vice versa is permitted by Part 3, Class L of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). However, the appeal building lies within an area that is the subject of designated Article 4 Directions which came into force on 30 November 2014 (Selly Oak, Edgbaston and Harborne Wards of the City) and 8 June 2020 (city wide). The Article 4 Directions withdraw permitted development rights for a

¹ Use as a dwellinghouse by (a) a single person or by not more than six residents living together to be regarded as forming a single household (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

change of use from C3 to C4, meaning that express planning permission is required for this type of development.

The appeal on ground (b)

5. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control *have not occurred* as a matter of fact. It concerns the circumstances leading up to, and at the time when the notice was issued. To succeed on ground (b), the appellant must demonstrate with sufficiently precise and unambiguous evidence that the appeal property was not in use as an HMO accommodating more than 6 residents. The test of the evidence is on the balance of probabilities.
6. The semi-detached appeal property is two-storey with a converted roof space to provide further living accommodation. It is situated in a predominantly residential area. The Council describe the property as being in use as a large sui generis HMO providing supported accommodation. Enhanced housing benefit is said to have been paid to the Registered Social Landlord and the property itself was being managed by the appellant – Provident Housing Supported Living Limited. The Council's Enforcement Report includes photographs of each room in the property. The evidence shows that there are 3 bedrooms, a separate shower room and kitchen on the ground floor. At first floor there are three bedrooms. At second floor, within the 'L' shaped dormer development there are a further three bedrooms.
7. The appellant's submissions are limited to section E 'Grounds and Facts' in the appeal form. Their facts on ground (b) refer to them 'never having received any formal noise complaints' and states that the property has been an HMO since 2021. Under ground (c) they also state that the property has 9 bedrooms and is in use as a large Sui Generis HMO.
8. From the presented evidence, there appears to be no dispute that the property provides accommodation for more than 6 unrelated individuals. The breach of planning control as alleged has clearly occurred, therefore the appeal on ground (b) must fail.

The appeal on ground (c)

9. In this legal ground of appeal, the appellant must demonstrate that the matters alleged do not constitute a breach of planning control. The burden of proof in ground (c) is upon the appellant, and the test of the evidence is on the balance of probabilities. The planning merits of the matters alleged do not fall to be considered.
10. The appellant claims that it was their understanding that all the relevant permissions were in place before work was carried out to create the nine bedrooms. While this may have been the case with other agencies/departments, the Council clarifies that HMO inspections are distinct, separate and unconnected to the planning regime and that Reliance Social Housing is a separate independent company which does not work alongside the Council. The issuing of an HMO licence by the Council concerns separate legislation and is not equivalent to a grant of planning permission.
11. Notwithstanding this, HMOs with more than six occupiers fall outside of any use class. To establish whether there would be a material difference, a comparison between the existing lawful use and the use of the property as proposed must

be considered. Although there is no statutory definition of 'material change of use'², it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use would occur is a matter of fact and degree and this is determined on the merits of a case.

12. The property, previously a 2 bedroom family home, has been substantially extended and internally rearranged to provide living accommodation for 9 individual adult residents. The layout I have described above is of a different, more concentrated character than I would expect if used as a single dwellinghouse under the provisions of Class C3 of the UCO.
13. It is probable that the introduction of 9 adults would lead to a more intensive use of the property, and this would significantly increase the potential for noise and disturbance to the immediate neighbours. This would be particularly so in terms of comings and goings, potentially at unsociable hours, of not only residents but visitors too. There would be a considerable change to the character of activities and to the use of the property from what one would expect within the previously modest-sized family home.
14. In this regard no such change is permitted by the GPDO or UCO, and no evidence has been submitted by the appellant to demonstrate the alleged change of use is not a material one. In my view, the alleged use in scale and character is materially different to the former use as a single dwellinghouse and that constitutes a material change of use. As such, it requires express planning permission. Since no planning permission has been granted, the use of the property as a large HMO constitutes a breach of planning control.
15. Therefore, the appeal on ground (c) must fail.

The appeal on ground (f)

16. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) of the Act provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case, its primary purpose is to remedy the breach by discontinuing the use of the land. For the appeal on ground (f) to succeed, the appellant must propose alternative lesser steps which would remedy the breach.
17. The appellant advises that the number of bedrooms have been reduced to six. The Council informs that 3 bedrooms have been "locked off" and are not in use. The appellant considers that by reducing the number of bedrooms to 6, planning permission would not be required. However, there is an Article 4 Direction in place, as detailed in my preliminary matters, which means that planning permission would be required for the property to be used to accommodate up to 6 individuals, a use that would be defined as a Class C4 small HMO.
18. Furthermore, having regard to the notice's requirements to remedy the breach of planning control, in the absence of an appeal on ground (a), as set out in section 174(2) of the Act, and a deemed planning application, the power

² 'Development' defined within s 55(1) of the 1990 Act as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

available to me under section 176(1) only relates to whether the requirements exceed what is necessary to remedy the breach and not the substance of the notice. If an appeal is not brought on ground (a), it is not appropriate for arguments to be introduced on the planning merits in the context of an appeal on ground (f). The appeal on ground (f) therefore fails.

The appeal on ground (g)

19. Although the appellant did not formally submit an appeal on ground (g) they refer to the residents as homeless vulnerable adults who are well settled into the house, and that evicting them from the house would cause distress for individuals who are already at risk with support needs. I acknowledge that having to find other accommodation may be stressful for the individuals, however the appellant did not choose to appeal on ground (a) that planning permission ought to be granted. Furthermore, as they did not formally appeal on ground (g) they have not suggested a period for compliance with the notice which would be considered more reasonable. In the absence of evidence to demonstrate otherwise, I am satisfied that the time given, six months, is proportionate and provides a reasonable period of time to look for other housing. Thus, the hidden ground of appeal on ground (g) fails.

S A Hanson

INSPECTOR