



Appeal Decision

Site visit made on 20 May 2025

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 JUNE 2025

Appeal Ref: APP/P4605/C/23/3330847

2 Oval Road, Birmingham B24 8PL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Craig Stevens against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 5 September 2023.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the Premises to a large HMO (Sui Generis).
- The requirements of the notice are to:
 - (i) Cease the unauthorised use as a large House of Multiple Occupation (Sui Generis)
- The period for compliance with the requirement is: Five (5) months.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction.

Matters Concerning the Enforcement Notice

1. Paragraph 1 of the Enforcement Notice (Notice) states that there has been a breach of planning control falling within section 171A(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act), which is the carrying out of development without the required planning permission.
2. Development is defined in section 55(1) of the 1990 Act as including ‘the making of any material change in the use of any building or other land’. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Whilst the Notice refers to ‘the unauthorised change of use of the land’ it does not allege that a ‘material’ change in the use of the land has occurred. It therefore follows that the allegation in the Notice would not constitute development as defined in section 55(1) of the 1990 Act. As the breach of planning control as alleged in the Notice does not constitute the development of land, planning permission would not be required for it. The Notice is defective in that respect.
3. However, having regard to the appellants’ case and their ground (c) appeal, they have clearly understood that the allegation was intended to refer to a material change of use of the land. As such, I am satisfied that this is a situation where I can correct the allegation to include reference to a ‘material’ change of use without it causing injustice to either party. In paragraph 3 of the Notice, the word ‘material’ can be included between unauthorised and change

Preliminary Matters

4. As no ground (a) has been pleaded, issues such as noise and disturbance, living conditions of neighbours and the impact on the character of the area are not matters before me for consideration.

5. As a point of clarification, a Class C3 use of The Town and Country Planning (Use Classes) Order 1987 (as amended) ('UCO') normally relates to a single person or by persons living in the property and regarded as forming a single household. This mainly relates to having a family link but can include a couple living together as if they were a married couple or civil partners or where a household where care is provided for residents. A Class C4 use as set out in the UCO normally relates to 3-6 occupants, who are not regarded as forming a single household, sharing the property and certain communal facilities as a House of Multiple Occupation (HMO).
6. The Town and Country (General Permitted Development) Order 2015 (the Order) permits the change of use from a Class C3 to a Class C4, unless there is a condition attached to the property or an Article 4 direction that has been served on the area or property, which restricts this right. There is no permitted change from a C3 or C4 use class to an HMO with more than 6 occupants or more sharing a property, which is classed as a Sui Generis use. This is often referred to as a large HMO and will be for the purposes of this decision.

The Appeal on Ground (c)

7. To succeed on ground (c), the appellants must demonstrate that, on the balance of probability, the matters alleged in the Notice, corrected as I intend, do not constitute a breach of planning control. The burden of proof is on the appellant. The appellant contends that the change of use of the land from three self-contained flats to a large HMO (of 8 persons) is not a breach of planning control.
8. I accept the appellant's premise that an amalgamation of three residential units to a single residential property within the same use class is not 'development' as defined in section 55 of the 1990 Act. However, in this instance, the change of use is not an amalgamation of several residential units into one, but a change of use from three flats (Class C3 of the UCO) to a large HMO (Sui Generis use), which does not fall within the same use class. Nonetheless, based on the evidence with the appeal, I have taken it that the appellant is contending that the alleged material change of use from three flats to a large HMO is not 'development' as defined in section 55 of the 1990 Act.
9. As set out in the preliminary matters, 'development' is defined in section 55 of the 1990 Act as including 'the making of any material change in the use of any building or other land' (my emphasis). It therefore follows that if a change of use is not a 'material' change of use then it would not constitute 'development.' If a change of use is not 'development' as defined under section 55 of the 1990 Act, it cannot be a breach of planning control. The appellant, therefore, seeks to demonstrate that the activity and movements associated with the alleged large HMO use for 8 persons is not materially different from the previous occupation of the building by six persons in three flats.
10. The issue on which the appeal turns is, therefore, whether the change of use to a large HMO can be regarded as materially different to the previous use as three flats. For a material change of use to have occurred, there must be some definable change in the character of the use from what has gone on previously, which is based on a matter of fact and degree. To carry out this assessment it is necessary to compare the current use with the actual previous use rather than a notional previous use. Detailed information on the two uses would, therefore, need to be provided with the appeal to allow the decision maker to carry out this assessment.

11. Based on the information provided with the appeal, the layout of the floor plans shows that there were previously three separate flats, one on each floor. All flats had a living space, a kitchen, a bathroom and two bedrooms. All flats accessed the building via a front entrance, and internal corridors and stairs provide access to the separate units on each floor. The ground-floor flat would have had direct access to the garden through the back door, but the occupants of the upper flats would have had to access the garden via a side gate and path. The submissions states that six residents were present when the property was used as three flats.
12. From the evidence before me, the property has not been altered externally, but the internal layout has been changed to include eight separate bedrooms, all with en-suite facilities¹. There are three bedrooms on the ground and first floors and two on the second floor. There are communal corridors as well as a kitchen and a utility room on the ground floor and direct access to a rear garden space. The internal changes mean that all occupants of the bedrooms can access the ground floor kitchen and utility room as well as the rear garden via the back door. It is assumed likely that there are single occupants and households in each of the eight bedrooms.
13. I accept that in this case there would be limited internal changes to the building, and an increase in the number of separate households and overall occupants to eight. However, aside from this, the appellant has provided limited detail on how the property was used previously and how it is currently being used as a large HMO. For instance, the submission states there were six residents, but it is not specified how those six residents were distributed among the three flats. The appeal submission also lacks sufficient detail on the composition of the flatted households, their average weekly movements to and from the property, whether they own and used vehicles and how much waste was generated. Similarly, no detailed information on these matters is provided on its current use as a large HMO.
14. Without detailed information on how the previous and current alleged uses operate, I do not have a solid evidential basis to accurately compare the two. As indicated earlier, when appealing on these grounds, the burden of proof rests with the appellant. The information presented in the Statement of Case is limited, imprecise, and ambiguous, failing to meet the required burden of proof. Accordingly, there is insufficient evidence to demonstrate that the use of the property as a large HMO, occupied by 8 persons, does not constitute a material change of use from three flats occupied by 6 persons.
15. Therefore, the appeal on ground (c) fails.

Other Matters

16. The conclusions in the appellant's Statement of Case indicate that the base level of activity for the property is an HMO. However, there is no evidence within the submissions to indicate that the property was used in this manner before the alleged material change of use to a large HMO took place. As such, I have given this no weight in my determination.
17. The appellant has directed me to several appeals as part of the submissions. The cases highlighted involve a mixture of appeals, including linked enforcement notice

¹ Bedroom 7 does include an ensuite but it is provided in a separate room across the corridor on the same floor.

and planning appeals², appeals against refusals of proposed Lawful Development Certificates (LDC)³ as well as section 78 planning application appeals⁴.

18. I appreciate this appeal has similar issues and considerations to those appeals highlighted. Also, in cases where a ground (c) appeal is made against an enforcement notice and a proposed LDC is sought, the onus rests with the appellant to make their case, and the legal test of a balance of probabilities is the same. However, matters such as planning policies and the effect of the development on the character of the area and living conditions are not material considerations in a ground (c) appeal. As such, the section 78 appeals highlighted are not directly comparable to the appeal before me. Also, I do not have the full details of the other enforcement and LDC appeals highlighted, but from the evidence submitted, they are in different locations, and it is likely that the information submitted, the circumstances, and other physical factors at the site are not the same as the appeal before me.
19. As such, I have taken the highlighted cases into account insofar as they provide useful information, but each case is different and must be individually judged and considering their circumstances. I have determined this appeal in this manner.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the Notice with a correction.

Formal Decision

21. It is directed that the Notice is corrected by:

In paragraph 3, insert the word 'material' between 'unauthorised' and 'change.'

22. Subject to the correction, the appeal is dismissed, and the Notice is upheld.

M. P. Howell

INSPECTOR

² Appeal reference APP/J423/C/05/2002588; 2002582 and 1181542 and 1181490.

³ Appeal references APP/Y1110/X/15/3132534; APP/Q3060/X/19/3228639; APP/D1780/X/19/3241496; APP/Y1110/X/15/3132534

⁴ Appeal references APP/D1590/W/20/3244314; APP/P4605/W/21/3278681