Planning Inspectorate

Appeal Decision

Site visit not required

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 JUNE 2025

Appeal Ref: APP/T5150/X/24/3336981
19 Dean Road, Brent, London, NW2 5AB

- 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 N Patel against the decision of the Council of the London Borough of Brent.
- The application ref 23/3390, dated 24 October 2023, was refused by notice dated 19 December 2023.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The development for which a certificate of lawful use or development is sought is for an existing use as an HMO with seven residents' units (sui generis).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proof in respect of LDC applications made under section 191 of the Act lies with the applicant and the relevant test of the evidence is on the balance of probability.

3. The Planning Practice Guidance states if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether the property has been in use as a House in Multiple Occupation (HMO) occupied by 7 persons (Sui Generis) for a period of at least ten years up to the date of the application.

Reasons

5. The LDC application seeks confirmation of use of the property as a '*sui-generis HMO with seven residents' units.'* However, to establish the lawful use of the property, it is necessary to consider the Town and Country Planning (Use Classes)

(England) Order 1987 (as amended) (UCO) as occupancy, and not *'residents' units',* determines whether the property may have been lawfully used as a use class C4 HMO, or a sui-generis HMO. A use Class C4 HMO is '*use of a dwellinghouse by not more than six residents*.'

6. I am satisfied that since 2022, and up to the date of the application (i.e., 24 October 2023), the evidence, including tenancy agreements, sufficiently demonstrates, on the balance of probability, that the property has been continuously occupied by seven residents as a sui-generis HMO. I am satisfied, based on the layout of the property and the provision of communal facilities, as well as other submitted evidence, that during this period the property has been used as a sui-generis HMO by seven people. However, when the appellant's evidence is considered prior to this time, it does not, in conjunction with the post 2022 evidence, sufficiently demonstrate a continuous ten-year use of the property by seven people. It is noteworthy that in an email between Mr Jay Hirani (the appellant's agent) and the local planning authority (LPA), dated 27 June 2022, he states that six residents occupied the building in 2014, 2016, 2017 and 2018, and four residents in 2021.

7. The above information casts sufficient doubt about the appellant's claim that the property has been continuously occupied by seven persons over ten years and hence is a sui-generis HMO as distinct from a use Class C4 HMO. Put another way, given the claimed occupancy of the property in 2014, 2016, 2017, 2018 and 2021, I do not find that the LPA could have taken enforcement action in terms of its use as a sui-generis HMO occupied by seven residents. The fluctuations in the occupancy level of the property between 2009 and 24 October 2023 is significant and the gaps between 'runs' of seven residents occupying the property, and then fewer, is such that ten years continuous use of the property as a sui-generis HMO is not sufficiently proven on the balance of probability.

8. There is contradictory evidence to the above in respect of a Freedom of Information complaint letter response, dated 31 May 2022, from Central and Northwest London NHS Foundation Trust (C&NL NHS Foundation Trust) to the appellant which refers to a variation in occupancy from eight to nine residents in each year from January 2008 until March 2022. I am not clear from the evidence whether the '8 residents' and '9 residents' referenced by the C&NL NHS Foundation Trust is an absolute occupancy at all times in a given year, or whether it relates to the total number of different residents that were occupied in the property in a given year albeit not all at the same time. This is not a determinative matter, in any event, as in my judgement this evidence demonstrates, at the very least, that the property was used as a supported living facility at this time and for more than ten years (see reasoning later in paragraph 15), as distinct from its claimed primary use as a sui-generis HMO.

9. In dismissing an essentially identical LDC appeal in October 2023[1] (2023 LDC Appeal), the Inspector had regard to a Freedom of Information (FOI) response from the C&NL NHS Foundation Trust, dated 18 May 2022, which confirmed that *'this supported housing unit has been used for over 11 years*. The Inspector also commented that *'the NHS Trust website indicated Dean Road is a supported housing facility which consists of independent flats or bedsits with some communal facilities and 24-hour staff support'* and *'an email dated June 2022 notes the*

[1] Appeal Ref APP/T5150/X/22/3309003

property was previously used as a supported housing unit in partnership with the NHS to house single homeless men with various vulnerabilities. This type of use is supported by the presence of a CarePhone facility'.

10. There is an absence of precise and unambiguous evidence before 2008, and it is understood that the property was originally constructed and used as a single dwellinghouse.

11. As part of this appeal, the appellant has submitted evidence which has not been disputed by the LPA, to demonstrate that the CarePhone company was dissolved on 2 January 2018 and that the CarePhone system in the property was removed as per the 17 April 2023 invoice submitted as part of the evidence. The evidence also includes an email from Peabody Housing, dated 24 June 2022, which specifies that *'the property was previously used as a supported housing unit in partnership with the NHS to house single homeless men with various vulnerabilities. The scheme was closed down last year'.*

12. Even if I were to accept that the property was not being used as a supported housing facility from 2018 (i.e., when CarePhone was dissolved), as distinct from the comment made by Peabody Housing dated 24 June 2022 that '*the scheme was closed down last year'*, and the evidence from C&NL NHS Foundation Trust in the letter dated 18 May 2022 that *'this supported housing unit has been used for over 11 years'*, such evidence does not demonstrate, on the balance of probability, that the property was not being used as a supported housing facility immediately prior to the 2 January 2018 rather than as a HMO. It is noteworthy, in any event, that the presence of the CarePhone facility was not a determining factor when the previous Inspector made his decision to dismiss the 2023 LDC appeal. Indeed, the Inspector commented *'I noted at the site visit that there was no CarePhone facility. However, the evidence suggests on the balance of probability that it was there once, and, in any case, the other evidence alone itself demonstrates the previous use of the building. It was noted that the scheme was closed last year'.*

13. The appellant contends that the property could not have been used as a supported housing facility as evidence has been submitted relating to matters such as motor vehicle fines, debt collections, medical documents, gym membership, eviction notices, bank statements, travel insurance documents, deposit protection letters etc in association with those that have occupied the property. It is claimed that a homeless or vulnerable person would not likely receive such correspondence or documents. It is not necessarily the case that a previously homeless person would not receive the sort of documentation or have access to the type of facilities as outlined above. I have little information before me about the nature of the Dean Road 24-hour supported housing facility as mentioned on the NHS website, but it remains possible that this could have included general day to day living support for residents including assistance in terms of obtaining financial support and/or benefits from relevant agencies.

14. I note the appellant's statutory declaration which states the appeal property has *'been consistently used as a House in Multiple Occupation (HMO) for more than ten years. It has been rented consistently to separate individuals on a room-by-room basis for more than 10-years.'* The declaration does not refer to the level of occupancy throughout the 10-year period and is not supported with tenancy agreements covering the whole period. Moreover, the FOI response from C&NL NHS Foundation Trust, dated 18 May 2022, casts sufficient doubt about the

appellant's HMO use claim in his statutory declaration. In that letter, the C&NL NHS Foundation Trust says that the *'supported housing unit'* has been used for over 11 years.

15. The appellant makes the claim that a 24-hour supported housing facility is still an HMO. This is a matter that was considered and reasoned by the previous Inspector in paragraph 6 of the 2023 LDC appeal decision. I have no reason to doubt the reasoning of the previous Inspector in respect of the relative and significant differences in the character of the activities associated with such uses and, in particular, the comment made that *'the pattern of use, comings and goings, is likely to be considerably different for people with 24 hours care/surveillance and workers being on site. A main point is that there would likely be a significant element of control of the occupants and probably moderation of behaviours. A group of separate users in an HMO would not have that type of control'.*

16. For the above reasons, I conclude that the appellant has not demonstrated, on the balance of probability, a continuous ten-year HMO use of the property by seven residents. Given the six-person restriction imposed in respect of Use Class C4 of the UCO, the appellant's evidence is not sufficiently precise or unambiguous to demonstrate that the property is lawfully a sui-generis HMO.

Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an existing use as an HMO with seven residents' units (i.e., a sui generis HMO for seven residents) was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D Hartley

INSPECTOR