



Appeal Decision

Site visit made on 20 May 2025

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

an Inspector appointed by the Secretary of State

Decision date 17 June 2025

Appeal Ref: APP/P4605/X/24/3344080

4 Reservoir Retreat, Birmingham, West Midlands B16 9EH

- 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 Michael Pele Hussain (Pele Property Ltd) against the decision of Birmingham City Council.
 - The application ref 2024/01143/PA, dated 13 May 2024, was refused by notice dated 7 May 2024.
 - The application was made under section 191(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 for an existing use as 4-bed HMO (Use Class C4).
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Decision

1. The appeal is dismissed.

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. Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO) provides for the use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO). The Class C4 interpretation, within the UCO, states that HMO has the same meaning as in section 254 of the Housing Act 2004 i.e. a group of not more than six unrelated people not living together as a single household who share one or more basic amenities, such as a kitchen or bathroom, or the living accommodation is lacking in one or more basic amenities.
4. Use Class C3(c) of the UCO provides for the use of a dwellinghouse where not more than six residents live together as a single household where no care is provided to residents. Class C3(c) allows for groups that do not fall within the C4 HMO definition, to be provided for within a residential class.
5. A Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 applies to the appeal site and removes permitted development rights for a change of use of a dwellinghouse (Use Class C3) to an HMO (Use Class C4). The city-wide Article 4 Direction came into force on 8 June 2020. Thus, after 8 June 2020, if a property was not already a

lawful small HMO, an application for planning permission would need to be made to change the use from a dwellinghouse to a small HMO (Class C4).

Main Issue

6. The main issue is whether the Council's refusal to issue an LDC was well-founded. In this case this turns on whether the appellant can show that, on the balance of probabilities, the use of the property as an HMO (Class C4) had occurred prior to the introduction of the Article 4 Direction on 8 June 2020 and continued in that use until the date of the LDC application on 13 May 2024.

Reasons

7. The question being asked in the application for an LDC under section 191(1) is whether the existing use of the building is lawful. 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.
8. Section 191(2) of the 1990 Act states that 'For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then 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 (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.' Subsection 191(2)(b) is met in this case as there is no evidence before me to indicate that there was an enforcement notice in force at the date of the LDC application.
9. In refusing the LDC application the Council considered that the evidence provided by the appellant did not demonstrate that, on the balance of probability, the property had been continuously used as a small HMO for a period from before the introduction of the city-wide Article 4 Direction on 8 June 2020.
10. Consequently, in this case the appellant must demonstrate that, on the balance of probabilities, the property was, at the time of the LDC application, being occupied by a group of up to six unrelated individuals simply sharing the basic amenities in the property rather than living together as a single household. There is no single criterion to decide if a single household is present, but a key consideration to determine whether a property falls within a C3(c) use or a C4 use is the relationship of the occupants which provided a reason for them living in the same house, and the way they live together.
11. There are indicators such as: whether the persons living in the house came to it as a single group or whether they were independently recruited; what facilities are shared; whether the occupants are responsible for the whole house or just their particular rooms; whether individual occupants are able to lock their rooms; whose responsibility it is to recruit new occupiers if individuals leave; who allocates rooms; the size of the establishment; how stable the group composition is; and whether the mode of living is communal.

12. The appeal site is a three-storey terraced dwelling within a mostly residential area. Plans show that the ground floor has a bedroom, living room, kitchen and bathroom. The first floor provides two further bedrooms and a bathroom and there is a fourth bedroom on the second floor. The appellant states that they bought the property in February 2019 and that it had been previously let to students. A copy of an email from Birmingham City Council dated 7 April 2020 confirms the submission of a declaration for the property to be considered as an HMO. It provides confirmation that HMO use of the property had been accepted by the Council in advance of the city-wide Article 4 Direction coming into force. It does not, however, demonstrate that the property was actually *used* as such.
13. The property is said to be let to students, on a joint tenancy/Assured Shorthold Tenancy (AST), who share the kitchen, living room and two bathrooms. Each student has their own bedroom and is liable to pay their own monthly rent. Copies of AST agreements have been provided in full which cover the following periods: July 2019 to June 2020, July 2020 to June 2021; August 2021 to July 2022; August 2022 to July 2023; August 2023 to July 2024; July 2024 to June 2025. The AST agreements are signed as a group and show that all four occupiers are jointly and severally liable for the obligations contained within. If there is damage to the property, the Landlord can hold all or any tenants liable. It also means that, if the Landlord is required to give notice of anything, they are only legally required to inform one of the tenants. Furthermore, if a tenant fails to pay their rent, while it would be most usual to initially pursue the individual tenant and their guarantor, the Landlord is able to pursue the other tenants for any rent due.
14. The AST agreements also state that it is the whole property that is rented to the group and not individual rooms with shared communal areas. There is no suggestion that rooms are allocated to the tenants, and it is reasonable to assume that each group is left to themselves to choose their rooms. It would seem from the ASTs that the tenants are jointly responsible for paying household bills and for keeping the property in a good and clean condition. It is also a stipulation that if one tenant moves out, they must find a replacement tenant rather than the landlord. In my judgement, and with no evidence to the contrary, this strongly points to the tenants coming to the property as a pre-formed group and occupying it in that manner as a single household.
15. Overall, I find that the appellant's evidence is not sufficiently precise and unambiguous to demonstrate that, at the date of the LDC application, the property was occupied as a small HMO. I conclude, therefore, that the appellant has not discharged the burden of proof that rests upon them to show that, on the balance of probabilities, the use of the property as a small HMO (Class C4) had occurred prior to the introduction of the Article 4 Direction on 8 June 2020 and continued in that use to the date of the LDC application on 13 May 2024. The Council's refusal to grant an LDC in respect of the existing use of the property as a small HMO was well-founded and the appeal cannot succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR