



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 18 June 2025

Appeal Ref: APP/P4605/X/24/3349095

24 Selwyn Road, Birmingham B16 0SN

- 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.
 - The appeal is made by Mr Carl Bedward (Ridgacre Property Ltd) against the decision of Birmingham City Council.
 - The application ref 2024/00448/PA, dated 5 February 2024, was refused by notice dated 22 April 2024.
 - The application was made under section 192(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 the proposed creation of 2no. one-bed flats at first floor.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
3. The burden of proof is on the appellant to show that the development referred to in the application would have been lawful if begun on the date the application was made. The test is on the balance of probabilities. 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.

Main Issue

4. The main issue is whether the Council's decision to refuse the LDC application was well-founded. This turns on whether the proposed change of use of the first floor of the property to two flats would represent development as set out in s55 of the 1990 Act for which planning permission would be required.

Reasons

5. 24 Selwyn Road is a two-storey detached property in a residential area. From the brief reference to the planning history, the original property was converted into 3 one-bed flats and 4 bedsits following the grant of planning permission on 25 June 1987 (Ref: E/C/08182/004). At the time of my visit, the works sought by the LDC

application had been completed. The property, as a whole, comprises 3 one-bed flats on the ground floor, 2 one-bed flats on the first floor (the subject of the appeal) and one studio flat on the second-floor loft space. The property retains a distinct separation between the ground floor, first floor and second floor accommodation.

6. The plans which formed part of the LDC application show the layout of the property prior to the recent works taking place (existing layouts drawing 1467/1). The first floor is shown to have comprised 3 bedsits each with their own kitchen but no bathroom. There was one communal bathroom for the 3 bedsit units on the same floor. Indeed, at my accompanied site visit, the appellant's representative confirmed this to be the case.
7. I have no further information regarding their use or occupation. Nevertheless, and in the absence of firm information to suggest otherwise, the layout and the shared space indicate to me that at the time of the LDC application, the first floor would have been defined as being within a Class C4 use within the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). That is a house in multiple occupation (HMO).
8. 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 that the living accommodation is lacking in one or more basic amenities. "Basic amenities" is defined as a toilet, personal washing facilities or cooking facilities. The definition of an HMO set out in s254(1) relates to 'a building or part of a building'.
9. It is therefore reasonable to consider, based on the evidence before me, that the use of the first floor would have been as a single dwellinghouse rather than 3 individual self-contained flats as claimed by the appellant's evidence. Thus, the works to the first floor have resulted in the sub-division of the single dwellinghouse that was in a C4 (small HMO) use to 2 self-contained flats which fall within use Class C3 of the UCO rather than an amalgamation of units as purported by the appellant.
10. A Class C3 use is described as the use as a dwellinghouse (i.e. houses, flats, apartments) (whether or not as a sole or main residence) by: (a) a single person or by people 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).
11. Development comprising a change of use of a building from a use falling within Class C4 to a use falling within Class C3 is normally permitted development under the terms of Schedule 2 Part 3 Class L of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). This permitted development right was first introduced through an amendment to the previous version of the GPDO¹, which came into effect on 1 October 2010².

¹ The Town and Country Planning (General Permitted Development) Order 1995.

² The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010.

12. However, development is not permitted by Part L if it would result in the use as two or more separate dwellinghouses falling within Class C3 (dwellinghouses) of the Schedule to the UCO of any building previously used as a single dwellinghouse falling within Class C4 (HMO) of that Schedule.
13. Overall, I consider that, as a matter of fact and degree, at the date of the application the first floor of the property was a building that was in use as a C4 dwellinghouse. The proposal comprises a change of use of the building to use as 2 separate dwellinghouses falling within Class C3. Section 55(3)(a) of the 1990 Act makes it clear that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. The proposal thus requires planning permission. Since it cannot benefit from GPDO Schedule 2 Part 3 Class L for the reason given above it requires express planning permission.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use sought 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).

S A Hanson

INSPECTOR