Planning Inspectorate

Appeal Decision

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 01 July 2025

Appeal Ref: APP/P4605/X/24/3352038
27 St. Peters Road, Handsworth, Birmingham B20 3RR

- 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 Aslam Khan against the decision of Birmingham City Council.
- The application ref 2024/03440/PA, dated 30 May 2024, was refused by notice dated 13 September 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 a large 10-Bedroom HMO Sui Generis.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this case, where all the required information 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. The appellant submitted new evidence with the appeal which was not before the Council when it made its decision. Since s195(2) of the Town and Country Planning Act 1990 (the 1990 Act) refers to whether or not the Council's refusal was well-founded, rather than the reasons for that decision, it is appropriate that I consider the new evidence.

Main Issue

4. The main issue is whether the council's refusal to issue an LDC was well-founded. In this particular case this turns on whether the appellant can show that the lawful use sought has continued for 10 years prior to 30 May 2024, without any other intervening uses until the date of the application, so as to be immune from enforcement action in accordance with s171B(3) of the 1990 Act.

Reasons

5. The question being asked in any application for an LDC under section 191(1)(a) of the 1990 Act is whether any existing use of buildings or other land is lawful. Section 191(4) of the 1990 Act indicates that if, on an application under this section, the local planning authority is provided with sufficient information satisfying them of the lawfulness of the use at the time of the application they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of

the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence and relevant planning law.

6. Section 191(2) of the 1990 Act states that uses are lawful at any time if (a) no enforcement action may then be taken in respect of them; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. There is no suggestion here that the existing use is in breach of an enforcement notice. The point in contention is whether no enforcement action could be taken against the existing use as at the date of the LDC application. This could, for example, be because the use claimed does not represent a material change of use and so does not constitute development requiring planning permission, or because the time for enforcement action has expired, and the claimed use is therefore immune. It is the appellant's case that the claimed use is immune through time. No argument is made that a material change of use has not occurred.

7. For clarity, the use of a property as a dwellinghouse occupied by 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 falls into Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended). Class C4 provides for the use of a dwellinghouse by not more than six residents as a house in multiple occupation[1] (HMO). An HMO used by more than six unrelated people not living together as a single household does not fall within a specified use class. It is within a use of its own, a sui generis use. That means each such sui generis HMO use is entirely unique and the assessment of any application must address its particular nature, including numbers of occupants.

8. The banner heading above lists the appellant's description of the use to which he sought the LDC. But caselaw has held, and National Planning Practice Guidance makes clear, that applications for LDCs must relate to a specific use, operation or development, so as to define it unambiguously and with precision. This is particularly for uses which do not fall within any 'use class', as in this appeal. It is therefore necessary to specify in the description exactly how many *people* the LDC seeks to establish as the lawful existing use; 'a large 10 bedroom HMO' is not precise enough.

9. From the evidence presented by both parties, it is clear that the LDC application sought to establish the lawful use of the property by 10 tenants as a large HMO (sui generis). The grounds for the LDC application state 'the property has been used continuously as a House in Multiple Occupation (HMO) for 10 tenants for over 10+ years. This use has been consistent and without interruption.' Consequently, for the avoidance of doubt, I am assessing this appeal on the basis that the appellant is clearly seeking a lawful use of the property as a large (sui generis) HMO for 10 people. If he subsequently decides to seek a lawful use for something other than this in the future, he can apply for another LDC.

10. The appellant therefore needs to show that, on the balance of probability, the use had existed on a substantially uninterrupted basis for at least ten years by the date of the application for the LDC. Consequently, the evidence to support that claim needs to date back to at least 30 May 2014 and must be precise and unambiguous. The burden to make the case rests with the appellant.

[1] HMO has the same meaning as in section 254 of the Housing Act 2004

Assessment of the evidence

11. The appeal property contains 10 bedsitting rooms each fitted with a kitchen. The tenants share bathrooms within the property. Evidence submitted by the appellant seeks to demonstrate that the HMO use claimed began at the earliest in 1997 and has continued as such to the date of the LDC application. The evidence includes four signed Affidavits, tenancy agreements (TAs), HMO licences, utility bills, council tax information, certificates of Employers' Liability Insurance, self-assessment tax calculations from HMRC, photographs of the interior of the property, and safety certificates.

12. A signed Affidavit dated 30 September 2024 by MJ (not listed as a tenant) states that the property has been a fully occupied HMO for the last 20 years. A signed Affidavit dated 20 November 2024 by AS states that there are 10 bedsits, and that the property has been fully occupied with HMO tenants for the past 12 years. They state that they have been conducting electrical installations, inspection reports, test certificates etc at the property during that time.

13. A signed Affidavit dated 30 September 2024 by OE states that they have been residing at the property from 2013 to the current day. They confirm the property is fully let as a 10 bed HMO. There are 5 TAs for this person commencing in July 2013 for 6 months, but the TAs do not fully cover the time that they claim to have lived at the property.

14. A signed Affidavit dated 1 October 2024 by AS states that they have been residing at the property from 1 August 2011 to the current day. They confirm the property is fully let as a 10 bed HMO. There are four TAs for this person commencing on 20 July 2020 for 6 months, 21 January 2021 for 6 months, 20 July 2021 for 12 months and 22 August 2023 for 12 months. Again, the TAs do not fully cover the time that they claim to have lived at the property.

15. Copies of agreements for the letting of a furnished dwellinghouse on an assured shorthold tenancy under Part 1 of the Housing Act 1988 (TAs) have been provided covering a period between 2009 and 2024. However, there are significant gaps in the evidence for each room over the requisite period. At no point is there evidence from the TAs that all ten rooms were being occupied at the same time. There are also five periods for which no TAs have been provided. It is of course possible that some of the TAs rolled over, but I have no evidence of that happening.

16. Nonetheless, from what has been presented, the evidence strongly points to the property being occupied by no more than 6 tenants at one time up until July 2020. From this time, the TAs provided show that, generally, the property was occupied by 4 to 7 tenants with the exception of a period of 12 months between August 2022 and July 2023 for which just one TA has been provided for room 4. While the Affidavits state that the property has been 'fully occupied' for more than 10 years, this is not supported by the collection of TAs provided by the appellant. In these circumstances I can only afford the Affidavits limited weight.

17. There are copies of bills from Severn Trent for some of the years, although it is uncertain as to what these show, particularly as it seems that the property has a rateable value rather than a water meter which may have helped to support the claimed level of occupancy. Furthermore, while the information relating to other utility usage may demonstrate that the property was occupied, and I appreciate that it would not be feasible to have bills in individual tenants' names due to their transient

nature, they do not support the continual occupancy of the property by 10 tenants. Consequently, I give limited weight to these submissions.

18. While some weight is given to the HMO licences which state that the premises is ‘reasonably suitable for occupation by not more than 10 persons’, those by themselves do not evidence the actual *use* of the property. The appellant has also provided information from HMRC which shows an income derived from profit made from UK land and property. Although these may well relate to the appeal property, there is no firm evidence to show that they do and moreover, they only cover recent years. There is nothing to show me that the property generated an income consistently in line with what one would expect from the letting of the rooms in the house to 10 tenants over ten years. Such information could be gained from bank statements that would provide records of rental incomes corroborating the use by individual named tenants and would be a firmer indicator of the use of the property over the years.

19. The presented evidence indicates that the level of occupation has fluctuated significantly over the years. While there are TAs dating back further than 10 years, there is no clear evidence of the property being occupied by more than 6 tenants until July 2020 and even then, there is no evidence to support the claim that the property was occupied by 10 tenants at one time. Given that the property has more likely than not been rented to tenants over the years, it is entirely plausible that during some of this time the property may have been in a different use, for example a small HMO, thus it is possible that an increase in tenants to more than 6 (large HMO) would have been a change that would have required express planning permission, if that change was material.

20. Although a wealth of information has been provided by the appellant, as set out above, a sui generis HMO is not a generic use, and it is necessary to be specific in terms of the numbers of residents the LDC is seeking to establish. While the evidence indicates that it is more likely than not that the property is let to tenants, and that the property has ten available bedsitting rooms, to enable me to allow the appeal and issue an LDC for a large HMO for 10 people, I would need to be satisfied that the property had been *occupied* continually by 10 people for ten years without significant interruption prior to the LDC application.

21. Overall, without sufficient precise and unambiguous evidence, the appellant has not demonstrated that, on the balance of probabilities, the existing use of the appeal property as a large HMO occupied by 10 people was lawful at the date of the LDC application.

Conclusion

22. For the reasons given above and having regard to all other matters raised, I conclude that the Council’s refusal to grant an LDC for the use of the property as a large HMO for 10 people (sui generis) was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR