



Appeal Decision

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 27th October 2025

Appeal Ref: APP/A1530/X/24/3357828

4 Cowdray Avenue, Colchester CO1 1UT

- 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 Stacey Sumner against the decision of Colchester City Council.
 - The application ref 241158, dated 14 June 2024, was refused by notice dated 30 August 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The use for which a certificate of lawful use is sought is as a large House in Multiple Occupation (HMO) Sui Generis
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Due to the nature of the appeal, a site visit was not necessary. The appeal can be determined on the evidence submitted and the statutory provisions that apply. An application for an LDC is not an application for planning permission and planning policies and matters such as whether there is a demand for HMO accommodation are not relevant.
3. The description in the application form refers to C4 - HMO. The Town and Country Planning (Use Classes)(Amendment) (England) Order 2010 defines C4 as 'use of a dwellinghouse by not more than six residents as a "house in multiple occupation."' Occupation by more than 6 residents is a large HMO (Sui Generis) which falls outside of the Use Classes Order.
4. From the documentation provided, the appellant is seeking an LDC for HMO use by more than 6 residents and the Council has assessed the application on that basis. I have therefore referred to large HMO (Sui Generis) in the description of the LDC for the banner heading.

Main Issue

5. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well founded.

Reasons

6. Under s191(1)(a) of the 1990 Act, any person who wishes to ascertain whether any existing use of buildings or other land is lawful may make an application for the purpose to the local planning authority specifying the land and describing the use. S191(2)(a) of the 1990 Act specifies that for the purposes of the Act, uses and operations are lawful at any time if 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).

7. The time limit relevant for taking enforcement action under s171B(3) of the Act regarding the use of buildings or other land is ten years. In the application form, the appellant has ticked the box stating that the use, which is not operational development or a change to use as a single dwelling house, began more than 10 years before the date of the application. No explanation is provided as to why the appellant then refers to 4 years in the evidence.
8. Since the application was made on the 14 June 2024, the appellant needs to show, on the balance of probabilities, that the material change of use to a large HMO (Sui Generis) occurred on or before the 14 June 2014 and continued for at least 10 years after the date of change without any significant interruption.
9. As established in *Gabbittas v SSE & Newham LBC* [1985] JPL 630 and the Planning Practice Guidance (PPG) an applicant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
10. The Council's refusal notice refers to insufficient evidence being supplied to indicate that there had been continuous use for ten years. The extent of the evidence submitted to the Council with the application is limited to the grant of Licences for HMO use by the Council's licensing department. The grant of an HMO licence is not by itself proof of occupation or actual use. Tenants may move out without the landlord notifying the Licensing Department of the Council of any changes.
11. There is an HMO Licence for the appeal property for the period from 18 February 2020 to 17 February 2025 which states that the maximum number of occupiers allowed is 8. The licence lists 8 bedrooms but refers to bedroom 8 as being self-contained and also states that bedroom 7 is undersize and should not be re-let.
12. There is a later licence for the period from 8 March 2024 which expires on 7 March 2029. This licence allows a maximum of 7 persons but states that the ground floor kitchen provides amenities for no more than 6 persons due to its size and the 7th person would occupy what appears to be the larger self-contained room. There is no explanation as to how many persons actually occupied the appeal property and for what period. The position with what is described as a self-contained room in the Licences has not been addressed in terms of how it fits into the application for an LDC for HMO use.
13. Although the application form refers to HMO use since 2007, the approved plans for extensions in 2009 and 2011 do not support HMO use in terms of layout and the number of bedrooms.
14. The additional evidence submitted with the appeal form includes a fire safety report, bank statements, some tenancy agreements and an electrical installation condition report. The Council does not consider that the additional evidence alters its view and has questioned whether the evidence should be accepted. However, the purpose of the LDC provisions is to enable an objective decision to be made on the basis of the best facts and evidence available.

15. The appellant has provided a coloured chart for the period from 2013 to 2024 which refers to tenancy agreements that have been supplied. However, the only entry for 2013 is a tenancy agreement for Room 6 for 6 months. There are no entries for the period from August 2013 to February 2018. There are bank statements showing payments from various tenants for various properties including the appeal property from 2019 onwards. However, the bank statements do not relate to a ten year period and do not identify 7 or 8 tenants paying rent or deposits.
16. The reports provided show that the appeal property has various certificates with regards to gas, electrical appliances and fire alarms on specific dates. However, these reports do not provide any information as to how many rooms were actually occupied and in HMO use.
17. There is limited information as to the use of the appeal property over any 10 year period in terms of numbers and the nature of that occupation. The evidence provided by the appellant is not precise and unambiguous.

Other Matters

18. The appellant has referred to an appeal decision¹ where an LDC was issued after further documentation was submitted being comparable to this appeal. The decision has not been provided and it is not known what further information was supplied. However, each appeal has to be assessed on its own merits. In this case, even with the additional evidence, the appellant has not provided sufficient evidence to discharge their evidential burden.

Conclusion

19. For the reasons set out above, the appellant has not shown, on the balance of probabilities, that the material change of use to a large HMO (Sui Generis) occurred on or before the 14 June 2014 and continued for at least 10 years after the date of change without any significant interruption.
20. I therefore conclude that the Council's refusal to grant a certificate of lawful use 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).

E Griffin

INSPECTOR

¹ APP/A1530/X/24/3340977