



Appeal Decision

Site visit made on 10 December 2025

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 22nd December 2025

Appeal Ref: APP/P4605/C/24/3348611

36 Flint Green Road, Birmingham B27 6QA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Positive Limited against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 28 June 2024.
- The breach of planning control as alleged in the notice is 'Without planning permission, the unauthorised material change of use to a large 12 bedroom House in Multiple Occupation (HMO) (defined as a property rented to at least 3 people who are not from one 'household' but share facilities such as a bathroom and kitchen) with support provision (Sui Generis) shown in the approximate position marked in green on the attached plan.
- The requirement of the notice is to permanently cease the unauthorised use of the Premises as an HMO and cease the support provision.
- The period for compliance with the requirement is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), and (e) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - (i) the deletion of the word "*with*" before "support provision" in the allegation and its substitution with the word "*and*" so that it reads "and support provision"
 - (ii) the deletion of the word "*Permanently*" from the requirement.
2. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. The allegation refers to a material change of use as a large 12 bedroom HMO with support provision which is defined in accordance with the Council's policies as 'a property rented to at least 3 people who are not from one 'household' but share facilities such as a bathroom and kitchen) with support provision (Sui Generis)'. An HMO is a property in which three or more tenants forming more than one household share basic amenities. Occupation by more than 6 residents is a large HMO (Sui Generis). The parties agree that the appeal property is in use as a large House in Multiple Occupation (HMO) and support is provided.
4. The allegation refers to HMO use *with* support provision, whereas the requirement is to permanently cease the unauthorised use of the Premises as an HMO *and* cease the support provision. The use of the word 'permanently' is not needed when the requirement runs with the land and it is not repeated for the support

provision. The allegation should refer to 'and support provision' rather than 'with support provision' so that the requirement flows from the allegation.

5. Amending the requirement by deleting the word 'permanently' and replacing the word 'with' for 'and' in the allegation does not cause injustice to any party as the substance of the allegation and the requirement are not altered. I will amend the wording accordingly.

The appeal under ground (e)

6. An appeal under ground (e) relates to the service of the notice. Section 172(2) of the Act requires that a copy of the enforcement notice shall be served: on the owner and the occupier of the land to which it relates and on any other person having an interest in the land being an interest which in the opinion of the authority is materially affected by the notice. The Council did serve a request for information under Section 330 of the Act on 15 September 2023 which asked for details of persons with an interest in the land but no response was received.
7. Positive Limited is the current leaseholder of the appeal property and the appellant. Six notices were served by the Council and the parties served included Living Well Supported Housing Limited which appears to be the previous leaseholder. Three notices were personally delivered to the appeal property. The appellant states that Living Well Supported Housing Limited 'does not now exist.' No details have been provided as to when the change of leaseholder occurred and whether that was before or after the service of the notice. Whilst Positive Limited was not served directly with a copy of the notice, an appeal has been made by the company which includes details of the notice as well as grounds of appeal.
8. Even if copies were not served as required, Section 176(5) of the Act states that if a person required to be served with a copy of the enforcement notice was not served, that fact may be disregarded if, the appellant or that person is not substantially prejudiced by the failure to serve. The appellant is not substantially prejudiced as a valid appeal has been made by the company as leaseholder including an application for planning permission. No other person has been identified who falls within the category of persons who should have been served, did not receive a copy of the notice and has, as a result of that failure, been substantially prejudiced. The appeal under ground (e) therefore fails.

The appeal under ground (a) and the Deemed Planning Application (DPA)

9. With a ground (a) appeal, the DPA derives from the amended allegation. The ground (a) appeal is therefore a request for planning permission for 'a material change of use to a large 12 bedroom House in Multiple Occupation (HMO) (defined as a property rented to at least 3 people who are not from one 'household' but share facilities such as a bathroom and kitchen) and support provision (Sui Generis)'.

The main issues

10. The main issues are (i) the effect of the development upon the living conditions of the occupiers of the appeal property with particular regard to overcrowding and communal space and (ii) whether the development provide sufficient car parking and bicycle storage.

Reasons

Living conditions of the occupiers

11. Flint Green Road is located in a residential area. Properties on the road vary in style but are largely semi-detached. The part of the road where the appeal property is located is characterised by pairs of substantial double fronted semi-detached properties and off road parking to the front. The appeal property and No 34 have these characteristics. The main difference between the pair of semi-detached properties is that the whole of the front of No 34 has been converted to hard standing for parking with an open frontage and a dropped kerb along its length.
12. The appeal property has 12 bedrooms over 3 floors with 3 bedrooms on the ground floor. The bedroom sizes vary from just over 20 square metres to 7.2 square metres based upon the layout plans provided. There is a shower room on the ground floor, and bathrooms on the first floor and second floor.
13. The Council refers to over- intensive use of the appeal property and unsatisfactory communal arrangements when there is only one kitchen/communal area for all occupiers. The communal space is located on the ground floor and consists of a kitchen and living room located towards the rear. The internal access to the kitchen is through the living room and there is a square open archway between the two rooms rather than a door. The absence of a door means that cooking smells and noise would permeate into the living room. At the time of my visit, the furniture in the living room was largely to one side and although there was a dining table, there were 2 dining chairs. The living room functions as a means to access the kitchen rather than an area where occupiers congregate to eat or relax.
14. The bedrooms vary significantly in size and the largest bedrooms on the ground floor are of a similar size to the single kitchen for use by 12 occupiers. There are also two washing machines in the kitchen which means that washing and cooking by up to 12 occupiers takes place in the same kitchen space. Most of the occupiers store food in fridges in their bedrooms and are likely to eat in their bedrooms. The HMO Supplementary Planning Document (SPD) (2022) specifically refers to insufficient communal areas increasing the time occupiers spend in their individual bedrooms which can hinder social cohesion within the property.
15. The lack of adequate functional communal living space affects all occupiers but will have greater impact on occupiers of smaller rooms including the smallest bedroom on the second floor at around 7.2 square metres. There is insufficient communal living space and the property is currently overcrowded as there are 12 bedrooms which results in a disproportionate amount of communal living space for that number of occupiers.
16. The appellant refers to the kitchen and communal living room being large and fulfilling the Council's spatial standards for licensed HMOs. However, the licensing and planning regimes are entirely separate and I have not been provided with a document which addresses standards for licensed HMOs. Irrespective of size, the available space has to be useable by the occupiers and in a suitable location. The thrust of the Council's policies is that HMO occupiers need adequate functional communal space for eating and cooking outside of a bedroom and relaxation.
17. The appellant has indicated that any issues in terms of communal space could be addressed by way of condition with the provision of an additional kitchen or living room. However, I have no details of what is proposed in terms of a revised layout

with regard to additional communal space, its location or functionality. I also have no details of what impact any proposed altered layout would have in terms of number of occupiers. There is insufficient information before me to consider whether imposing a condition is appropriate, were I minded to grant planning permission or to consider an alternative scheme.

18. For the reasons given, I find that the development does harm the living conditions of occupiers with particular regard to overcrowding and lack of communal space. The development is therefore in conflict with Policy PG3 of the Birmingham Development Plan 2031 and DM11 of the Development Management in Birmingham DPD (adopted 2021)(the DPD) which, amongst other things, refers to HMOs providing high quality accommodation with adequate communal living space comprising lounge, kitchen and dining space. It is also contrary to the National Planning Policy Framework which requires development to ensure a high standard of amenity for existing and future users. I find Policy DM10 of the DPD to be less relevant as Policy DM11 specifically addresses communal living space within HMOs.

Parking and Cycle Provision

19. The Birmingham Parking Supplementary Planning Document (November 2021) (the Parking SPD) acknowledges that HMOs are less likely to be occupied by car owners. However, an HMO with 12 occupiers should provide six parking spaces to comply with the recommended level of 1 space per 2 rooms. The frontage of the appeal property is made up of a mix of hardstanding and grass. The appellant indicates that 6 parking spaces could be provided within the appeal site but no further details are supplied and the Council refers to it providing 2 spaces. The presence of a grassed area limits the amount of space available for car parking on the frontage and any hardstanding would also have to accommodate refuse storage for 12 occupiers. The appellant has not identified how 6 car parking spaces can be provided within the appeal site.
20. The appellant states existing occupiers do not have cars but a grant of planning permission would run with the land and not relate specifically to the current occupiers or leaseholder. There is limited information provided about the level or nature of the support provided to occupiers other than that there are support workers who attend for 4 hours daily. No details are provided of how many support workers attend when there are up to 12 occupiers, how long each support worker stays at the property or what occurs at weekends in terms of visits. It is very likely that the support workers will travel by car particularly if they have other properties to visit. The occupiers may also have visitors who travel by car.
21. Off- site, the road widens on the opposite side to the appeal property to provide a marked parking area for all car users and there are no restrictions on parking on the road. A number of properties are able to park cars off the road within their frontages. However, there is limited information before me with regard to comings and goings to the appeal property in terms of vehicles to indicate that there is sufficient parking for cars when on-site car parking is limited. Third party comments refer to parking issues. The Parking SPD sets out criteria to be met where sufficient off street parking cannot be provided which includes parking surveys.

22. There is no formal bicycle storage provision which would encourage less reliance upon cars. The appellant has referred to the presence of a store in the garden which can be used for the storage of bicycles, if required. However, there was no store in the garden at the time of my site visit. I have no details as to what amount of bicycle storage is proposed for the number of occupiers or where such provision could be accommodated.
23. On the evidence before me, I do therefore find that the development does not provide sufficient car parking and bicycle storage. It is therefore in conflict with Policy DM15 of the DPD which, amongst other things, refers to development meeting the operational needs of the development in terms of parking provision including cycle parking and avoiding highway safety problems. I find other Council policies referred to in the notice to be of less relevant and they are not referred to in the Council's statement.

Other Matters

24. The appellant has referred to a planning application that was submitted in November 2023 but no acknowledgement of that application was received. Any issues that the appellant has with that application need to be addressed directly with the Council.
25. There are objections from local residents who refer to a number of matters including noise disturbance, drug-related incidents and the number of HMOs in the area. Any matters that involve criminal behaviour need to be reported to the police. I do not have any details with regard to the number of HMOs in the vicinity to be able to assess whether there is a breach of the Council's policies with regard to the number of conversions to HMO. Whilst the appellant refers to a lack of police reports, as I have found harm with regard to the main issues, these are not matters that I need to address further in determining this appeal.
26. The appeal property accommodates up to 12 occupiers who are in need of support. However, I have not been provided with any information to indicate that the level of support required would not be available in alternative accommodation or that the level of disruption for occupiers in vacating cannot be managed with appropriate support.

Conclusion on ground (a)

27. Section 38(6) of The Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with development plan unless material considerations indicate otherwise. I have found that the development fails to provide adequate living conditions for occupiers with particular regard to internal communal space and overcrowding. I have also found that the development does not provide sufficient car parking or bicycle provision. The development is therefore in conflict with the development plan as a whole. I do not find that there are any material considerations that lead me to a decision other than in accordance with the development plan. The appeal under ground (a) therefore fails and the DPA should be refused.

Other matters

28. There is no appeal under ground (g) with regard to the period for compliance which is 12 months. Whilst it will take some time for occupiers to work with other

agencies to seek new accommodation, there is no information before me to indicate that the compliance period of 12 months is not reasonable.

Conclusion

29. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

E Griffin

INSPECTOR