



## Appeal Decision

Site visit made on 9 December 2025

**by Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 January 2026

**Appeal Ref: APP/P4605/C/24/3337854**

**1-2 Gate Street, Birmingham B8 1JG**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Ms Tasleem Akhtar against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 9 January 2024.
- The breach of planning control as alleged in the notice is *without planning permission, the unauthorised change of use of the Premises to supported exempt accommodation (sui generis)*.
- The requirements of the notice are:  
*Permanently cease the use of the Premises as supported exempt accommodation (sui generis)*
- The period for compliance with the requirement is *6 months after this enforcement notice takes effect*.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

### Formal Decision

1. The appeal is dismissed, and the enforcement notice is upheld.

### Appeal on ground (a), the deemed planning application

2. The deemed planning application is for the material change of use to supported exempt accommodation (sui generis) at the appeal site.

#### *Main Issues*

3. The main issues are the effect of the development on the living conditions for existing occupiers with specific regard to standard of accommodation and noise and disturbance.

#### *Reasons*

##### *Living conditions – existing occupiers*

4. The appeal site is a three storey former office building located within a commercial area in Saltley. The property itself is utilitarian, constructed from rendered brick with flat roofs. The western elevation contains a significant number of windows with a horizontal emphasis, whilst the eastern elevation is more stark, largely devoid of openings at the upper floor levels.
5. The immediate area predominantly consists of warehouses and distribution centres, albeit there are residential properties located to the east of the site. From my site visit it was clear that the existing use at the appeal site consists of 34 bedrooms of supported exempt accommodation over three floors, with communal sitting, dining, kitchen, washrooms and reception an office on the ground floor. The upper floors also contain communal facilities in the form of small kitchens, toilets

and shower rooms alongside bedrooms. All the bedrooms are located on the western side of the building and thus contain windows, with the kitchen, toilets and washing facilities located on the eastern side.

6. Policies DM2 and DM10 of the Development Management in Birmingham (DMB) Development Plan Document, adopted in December 2021 seek all development to be appropriate to its location and not result in unacceptable adverse impacts on the amenity of occupiers and neighbours. DM10 further seeks residential development to meet the minimum Nationally Described Space Standards (NDSS), unless these include specialist accommodation covered by policy DM12 and defined in paragraph 4.28 of the DMB.
7. Paragraph 4.28 of the DMB states specialist residential accommodation is a generic description used to describe housing that meets the needs of specific groups of people. This can comprise of hostels, shared housing, care homes and supported accommodation for older people and people with mental health, learning disabilities, dementia, physical and sensory impairment, ex-offenders and drugs and alcohol dependency. The scheme subject to this appeal would meet the definition of specialist residential accommodation, thus policy DM10 would not be applicable here.
8. Nevertheless, amenity standards need to be maintained in accordance with DMB policies DM2 and DM12. Furthermore, policy PG3 of the Birmingham Development Plan (BDP), adopted January 2017 seeks to ensure that private external spaces are attractive, functional and inclusive. The guidance in the Birmingham Design Guide: Healthy Living and Working Places City Manual (BDG), adopted September 2022 indicates that residential development should have access to private outdoor amenity space, of sufficient size and quality to serve the occupants of the dwelling. The BDG states that for sui generis shared residential and houses of multiple occupation (HMOs) 10m<sup>2</sup> per resident is the minimum requirement.
9. I would acknowledge that outdoor amenity space is provided through communal space at the ground floor. However, this communal space would amount to two modest areas at the front and the rear of the site. The front consists of a hardstanding that incorporates car parking facilities, with the rear amenity area whilst private, is unkempt and not of a suitable standard. Consequently, the modest amount of outdoor amenity space available provides an unsuitable and unattractive amenity area for occupants. It could not reasonably be regarded as either attractive, functional and inclusive nor a high quality or useable environment. As such, because a satisfactory environment for occupiers would not be provided, the proposal would not comply with BDP policy TP3; DMB policies DM2 and DM12 and the guidance contained in the BDG.
10. The appeal site is located within a commercial area, where operations are likely to be loud and varied throughout the day. Paragraph 198 of the National Planning Policy Framework (the Framework) is clear, that proposals should amongst other aspects, avoid noise giving rise to significant adverse impacts on health and quality of life. Paragraph 200 also makes it clear that decisions should integrate effectively with existing businesses, and where the operation of an existing business could have a significant adverse effect on new development, the applicant (or 'agent of change') should provide suitable mitigation before the development is completed.

11. The Planning Practice Guidance (PPG) sets out further detailed guidance<sup>1</sup>, including the 'agent of change' principle. This includes taking into account current activities, but also those activities that businesses or other facilities are permitted to carry out, even if they are not occurring at the time of the application being made. The 'agent of change' will also need to define clearly the mitigation being proposed to address any potential significant adverse effects that are identified. Adopting this approach may not prevent all complaints from the potential new residents/users about noise or other effects, but can help to achieve a satisfactory living or working environment, and help to mitigate the risk of a noise nuisance being found.
12. There is no substantive information before me in respect of background noise levels currently existing at the site. There are also no details regarding whether any noise level tests were conducted inside the building to safeguard against any potential noise break-in from the existing commercial uses in the surrounding area, nor whether there are any proposed measures that could potentially suppress any of this noise and disturbance. Without these details, or evidence to the contrary, it is unclear whether there would be conflict between parties, and noise complaints which may necessitate further enforcement action. Any noise nuisance reported may lead to pressure for restrictions to be placed on the commercial uses, such that unreasonable burdens might be placed on these users' contrary to the guidance of the PPG.
13. I have given careful consideration to the use of conditions with regard to potential noise suppression measures at the site, however as I have been presented with little evidence to clarify what the existing noise levels are, nor whether any potential sound insulation measures could be adequate, as there are no quantifiable calculations on how the internal noise level criteria could be achieved. As such, given that there is uncertainty that sound attenuation measures would be sufficient to control any noise nuisance, I am not persuaded that this can be controlled by a condition, and I must adopt a precautionary approach.

*Conclusion on ground (a)*

14. I acknowledge that the development does provide community benefits, in that the scheme provides specialist residential accommodation. I am in no doubt as to the positive value of these matters, however, there is uncertainty regarding the acceptability of the living conditions of existing residents in respect to accommodation standards, noise and disturbance, which weigh against the scheme.
15. Overall, the development conflicts with the development plan when taken as a whole, and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict. The scheme also fails to accord with the requirements of the Framework. I therefore conclude that the appeal should be dismissed.
16. For these reasons the development is unacceptable and the appeal on ground (a) fails.

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<sup>1</sup> Paragraph: 009 Reference ID: 30-009-20190722

## Other Matters

17. The appellant has submitted information in the form of non-domestic rate invoices issued by Birmingham City Council, in an attempt to show the existing use of the premise. However, the appellant has not submitted a ground (d) appeal, in order to establish whether the supported exempt accommodation (sui generis) use would be immune from enforcement action. Even if I was to accept a hidden ground (d) appeal, from the evidence submitted the lawful nature of the use is inconclusive, as the appellant failed to provide the necessary evidence, at this stage, to show that the change of use was immune from enforcement action, on the balance of probabilities<sup>2</sup>.

## Conclusion

18. 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).

*Robert Naylor*

INSPECTOR

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<sup>2</sup> *Thrasyvoulou v SSE & Hackney LBC (No 1)* [1984] JPL 732