



## Appeal Decisions

Inquiry held on 6 November 2019

Site visit made on 7 November 2019

**by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA**

**an Inspector appointed by the Secretary of State**

**Decision date: 9 December 2019**

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### **Appeal A: APP/P4605/C/17/3188264**

#### **67 Langleys Road, Selly Oak, Birmingham B29 6HR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mrs M Hussain against an enforcement notice issued by Birmingham City Council.
  - The enforcement notice, numbered 2013/1507/ENF, was issued on 5 October 2017.
  - The breach of planning control as alleged in the notice is the material change of use of the premises from a dwellinghouse (Use Class C3) to a large house in multiple occupation (*sui generis*).
  - The requirements of the notice are to cease the use of the property as a large house in multiple occupation (*sui generis*).
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) (b) & (g) of the Town and Country Planning Act 1990 as amended.
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### **Appeal B: APP/P4605/C/17/3188265**

#### **89 Langleys Road, Selly Oak, Birmingham B29 6HR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mrs M Hussain against an enforcement notice issued by Birmingham City Council.
  - The enforcement notice, numbered 2014/0402/ENF, was issued on 5 October 2017.
  - The breach of planning control as alleged in the notice is the material change of use of the premises from a dwellinghouse (Use Class C3) to a large house in multiple occupation (*sui generis*).
  - The requirements of the notice are to cease the use of the property as a large house in multiple occupation (*sui generis*).
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) (b) & (g) of the Town and Country Planning Act 1990 as amended.
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### **Procedural Matters**

1. Evidence was given under oath in the form of a general affirmation.

### **Decisions**

#### *Appeal A*

2. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 3 months and the substitution of 7 months as the period for compliance. Subject to this variation, the enforcement notice

is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### *Appeal B*

3. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 3 months and the substitution of 7 months as the period for compliance. Subject to this variation, the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Reasons**

#### ***Ground (b) Appeal A – 67 Langleys Road***

4. The appellant claims that the description of the change of use is incorrect in that the previous use should be described as Use Class (C4) and not (C3).
5. The Council identifies that prior to purchase by the current owner, the property was a 3 bedroom house. Zoopla records show that it was advertised as a three bedroom semi-detached house in 2012 and the associated particulars show it to have been laid out as a traditional house.
6. Upon purchase the current owner made a planning application (2012/08368/PA) to extend the property. This is as the property is now and enabled the use as a large house in multiple occupation, as is the current situation. There is no disagreement that the house has been used as a large HMO since conversion, it is the time between purchase and the construction commencing that is at issue.
7. A planning contravention notice was issued and completed in 2017 in relation to potential enforcement action. This has to be completed accurately – there is a warning that it is an offence to knowingly or recklessly to give information, in response to the notice, which is false or misleading in any way. I accept that the appellant sought the advice of her planning consultant and that he prepared and completed the forms. This was in consultation with the appellant and Mr Hussain. While it is now hard to know exactly where answers were derived, it was the appellant's responsibility to ensure the information on the form was correct and if there was any reason to think it was not then it should have been explained.
8. There was some suggestion that Mr Hussain did not understand the planning implications/difference of a dwelling and HMO. I give this little weight given the number of HMO properties Mr Hussain is associated with, and that the planning advisor clearly understood the benefits associated with HMO use to any potential change of use to a large HMO. I accept at the time the Council was investigating the change to a large HMO, but even then the use as a small HMO would have been relevant and there would be no reason not to mention it as at that time the change was permitted.
9. I therefore place great weight on the PCN evidence. This shows the house to be a house in multiple occupation with 10 occupants from July 2013. The PCN notes the current use as HMO and that it began in July 2013. It was also noted the previous use as a dwelling and it was unknown how long this had occurred. This would coincide with the extension of the dwelling allowing the more intensive use. The planning contravention notice asks if any planning

permission has been obtained in association with the works/development and permission 2012/08368/PA was identified, confirming the works were associated with the subsequent change of use.

10. The appellant says the property was purchased on 8 October 2012 and the planning application submitted in December and approved in February the following year. It is said that in the short term, after purchase, tenants were sought until refurbishment was undertaken and 3 persons were found. Invoices show rent received for 3 persons from October 2012 to December 2013. These are a little odd, but it was confirmed by the representative of the company that is the format that the company uses for this type of situation. There was no fee, which is surprising, but may be based on the hope value (loss leader) of getting the management of the converted property. Payment in cash also seems strange of such large sums, particularly as the appellant notes it was normal in 2007 to get rental money by cheque with a gradual transition from then to the current BACS systems. However, I place some weight in favour of the appellant from these invoices and the evidence that some furniture was brought to the property at about this time.
11. However, the use is directly contradicted by the planning contravention notice for 67 Langleys Road, which clearly indicates that the house in multiple occupation use began in July 2013 and identified a different use for the building (dwelling) as the use prior to July 2013. There is no mention of the house in multiple occupation use prior to the dates noted on the PCN.
12. At some time after 3 March 2014 a letter was sent to the Council regarding Council Tax. It was not signed or dated although it was noted to be from the appellant although it would not have been sent directly by her as it would have been signed. Mr Hussain considered it likely to have come from one of the agents, but could not be sure which. Whoever wrote to answer the tax question that had arisen would have had to find out the information to respond. While I accept it may not have come direct from the appellant, it clearly identified the property as being uninhabitable at the time. I attach moderate weight to this.
13. An enforcement Officer visited the property on 19 December 2012 related to an alleged unauthorised dormer. This was in the period identified for the occupation by three people. Clearly there were considerable building works going on, including a loft conversion/dormer extension and a large rear extension, the base of which could be seen partially constructed. The appellant seeks to distinguish the extent of building works, suggesting that when construction began for the planning approved works the building was then unoccupied, but that for the work that were Permitted Development [PDR], there was no need for it to be empty. The extent of work for the PDR aspect clearly is a considerable part of the building works, involving large extensions.
14. The evidence of photographs relating to occupation during the works does not directly show the works and occupation. Some assessment of what is seen in the photographs was made and I accept that the ceiling appears to be in place during the loft conversion works. I also accept that the loft conversion work could have taken place with people in situ below. However, the photographs provided by the Council, particularly of the outside area, do not suggest it would be very practical for people to be living in the house. The rear photograph shows what was identified as a dining room to be empty of furniture. To my mind, while it may have been occupied during the works, the

photographs reinforce the PCN return that the use did not start until works were complete and support the letter to the tax office that the building was uninhabitable.

15. The Court has held that the appellant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to reject it, provided the evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".
16. This is a situation where some of the evidence is directly contradictory. There is the evidence from the appellant, invoices, for rent and furniture, and recollections of Mr Hussain and letting agents and the observations of the builder. However, against this is the planning contravention notice and, given the need for accuracy in completing it, I attach it great weight. This is supported by a photograph and the letter related to Council Tax. Given the contrary evidence, some from the appellant in the PCN, I conclude that the appellant has not demonstrated on the balance of probability that the building was used as an HMO prior to the change to the large HMO.
17. The appeal on ground (b) fails.

***Ground (b) Appeal B – 89 Langleys Road***

18. The situation with 89 Langleys Road is very similar to that of 67 Langleys Road.
19. The property was marketed in May 2013 as a 3 bedroom semi-detached house and room descriptions support that. Records indicate the property was purchased by the current owner about February 2014, when the current owner first paid Council Tax. In 2014 a planning application was made to extend the property (Ref 2014/02310/PA).
20. The works to extend the property commenced around June 2014 and were completed around August 2014 and again the works identified were in accordance with permission Ref 2014/02310/PA.
21. The appellant also notes that the building was for a short period in a C4 use prior to the 'planning permission' building works commencing. Again a planning contravention notice was issued later in relation to potential enforcement action and in response it was noted that the house in multiple occupation use commenced in July 2014 and that from 2014 there were 10 residents in occupation. In terms of the previous use the appellant indicated that it was a dwelling, but that it was unknown if it was a family dwelling or house in multiple occupation. While the use would be unknown in terms of the previous owner, the appellant would be expected to know if her own house had been used in the way suggested or not. The PCN indicates that the HMO use started in July 2014.
22. The Council also has photographs of the house taken within the relevant period. The building is clearly having considerable construction work undertaken, with the dormer appearing to be the main element of extension at that time. I have acknowledged above that loft conversions can take place while the lower floors are occupied, but the photographs show a building in very poor state of repair. Windows are clearly seen to be broken, with fanlights hanging down and some window frames have been removed at first floor level.

The appellant suggested that the photographs were taken on the day the windows were being taken out and refitted with new. While removal and refitting in a day is not unusual, there is no sign of such activity. It also seems unlikely, as the Council has a photograph taken much later when the rear extension is being constructed, where the windows are still not fitted. The appellant suggested these might have been taken out to enable the following works to be undertaken, but that would be very unusual and improbable. Rooms where the windows are removed include two bedrooms and a bathroom, making it highly unlikely the building could be occupied at the time identified.

23. I have taken into account the invoices provided in relation to the use intervening between purchase and extension of the property as noted above for 67 and the delivery of furniture and attach moderate weight to them.
24. This again is a situation where the evidence is directly contradictory. There is the evidence of the appellant and invoices, for rent and furniture, but against this and to which I attach great weight is the planning contravention notice, given the need for accuracy in completing it. This is strongly supported by photographs taken by the Council. Given the contrary evidence, some from the appellant in the PCN, I conclude that the appellant has not demonstrated on the balance of probability that the building was used as an HMO prior to the change to the large HMO.
25. The appeal on ground (b) fails.

### ***Ground (a) Appeals A & B***

26. The main issues are:

- The effect of the material change of use on the character of the surrounding area.
- The effect of the material change of use on the living conditions of neighbouring occupiers with particular respect to noise and disturbance.

### *Character*

27. The development plan includes the Birmingham Development Plan [BP] and the Birmingham Unitary Development Plan saved policies [UDP]. BP Policy PG3 relates to place making, noting amongst other things that new development should support the creation of sustainable neighbourhoods.
28. UDP Policies 8.23 and 8.24 relate to houses in multiple paying occupation. UDP Policy 8.23 notes that it includes dwellings occupied by persons who do not form a single household and UDP Policy 8.24 notes various criteria that are to be referred to in determining planning applications, and includes the effect of the proposal on the amenities of the surrounding area and adjoining premises and the amount of provision in the locality. I accept that this is an older policy and pre-dates the changes to the Use Classes Order, but it remains relevant and sets the principal for the need to control these uses. I also note that the uses accord with a number of the criteria for such developments.
29. Also relevant is The Planning Policy Document – Houses in Multiple Occupation in the Article 4 Direction Area of Selly Oak, Edgbaston and Harborne Wards [PPD], and the Wider Selly Oak Supplementary Planning Document. These are not attached to development plan policies and are not development plan

- policies, but they have been the subject of public consultation and adoption and therefore, while not being covered by Section 38 of the Planning Act, attract considerable weight.
30. The PPD seeks to control the growth and concentration of houses in multiple occupation, with the aim of maintaining balanced communities. The appellant tries to draw a distinction between the treatment of C4 HMOs and sui generis HMOs, particularly with reference to those in the Article 4 area. The document is clear in that it relates to all HMOs, but there is only a need to specifically cover C4 HMOs in the direction as there is no permitted development right for sui generis HMOs.
  31. The PPD notes that the purpose of the policy is to provide a policy approach to apply to planning applications seeking a change in use from residential property to HMOs in the Article 4 Direction Area. The aim is to manage the growth of HMOs by dispersing the locations of future HMOs and avoiding over concentrations occurring, thus being able to maintain balanced communities. It then explains why there is a need for the direction to control the C4 aspect of HMOs, because otherwise change to them would be permitted development. It does not suggest that there is no concern relating to sui generis HMOs.
  32. Policy HMO1 states that conversion of C3 houses to HMOs will not be permitted where there is already an over concentration of HMOs or where it would result in an over concentration. It defines where an over concentration is likely to be occurring, where 10% or more of houses within a 100m radius of the site would not be in use as a single family dwelling (C3 use). Proposals that breach this will be resisted.
  33. I do not agree with the suggestion of the Council witness that it would be a proper approach to simply say a proposed HMO is not acceptable because the 10% guide is exceeded. Matters need to be looked at in the round in the light of the development plan policies. However, dealing with HMOs is not a straight forward matter and simply asking does an individual proposed development cause harm by itself is not necessarily going to be a comprehensive approach. HMO occupation is complicated in terms of their impact. One HMO may never result in any impact on a neighbourhood in terms of such things as noise, parking, bins etc. Another may result in a problem one year, but not the next. A change of a single tenant may result in problems.
  34. However, HMO occupation is clearly different from family housing, generally having transient occupation, in this case on a yearly basis and having individuals, many of whom will not know each other, particularly at the beginning of an academic year. Of course a group of friends could get a house together for a year or two and be a more cohesive household. Having many individuals in a single house will be likely to be a more intensive use than is normal for a family. This is borne out by the Council's experience in other areas, particularly those closer to the hospital and university.
  35. The PPD notes that the decision to introduce the Article 4 Direction results from an analysis of city wide concentrations of HMOs, revealing particularly high levels found in Bournebrook and the spread to surrounding areas of Selly Oak, Harborne and Edgbaston wards. The aim is to manage growth of HMOs and avoiding over concentration occurring to maintain balanced communities. It is noted that existing high concentrations in parts of Selly Oak have led to a significant loss of amenity for residents.

36. The SPD for Selly Oak based on one of the objectives of the National Planning Policy Framework has an objective of the creation of mixed and balanced communities. It observes that the proliferation of shared/multi occupied housing also causes a number of other concerns, including strains upon local amenity (noise, car parking and litter) and on local services, including refuse collection, pest control and environmental health. There have also been issues with management and upkeep of properties. It identifies that these cumulative factors need to be addressed to improve the quality of the area and notes the introduction of the Article 4 Direction to control associated permitted development.
37. Quite clearly this guidance has been necessary to address the concerns related to over concentrations of HMOs and concerns related to unbalanced communities, impacts on character and amenity and on local services. The pressure tend to come from the proximity of the area to the hospital and university. I accept that this is a reasonable approach to the problem of over concentration of HMOs leading to unbalanced neighbourhoods.
38. The Selly Oak SPD is not part of the development plan, but it does support the aims set out in the UDP Policies 8.23 – 8.25 and I attach considerable weight to it. I accept that HMOs are part of the balanced communities, but it is right that the Council should intervene where the balance, left unchecked, is having an undesirable impact or is likely to. This means that an individual development may not itself have had a demonstrable impact on an area, but that it will be adding cumulatively to such uses for which planning is there to control before it becomes a problem.
39. Calculated in accordance with the guidance, around 67 Langleys Road there are about 34% of houses occupied as HMOs and around 89 Langleys Road about 20% are occupied as HMOs. This is well in excess of the guidance figure, and even looking at this as guidance, this indicates that there is currently a significant concentration of HMOs in the area of each unit.
40. Even if I were to use the appellant's calculations based on Langleys Road and not a radius about the properties, the concentration would be about 15.7%, which is also considerably in excess of the 10% figure and still indicative of an over concentration of HMOs.
41. Added to this is the evidence related to the impact that the current uses have had in relation to living conditions as set out below and the Council's experience in the area. Overall, I conclude that each of the developments has contributed to an over concentration of HMOs in the area and that this has affected its character.

#### *Living Conditions*

42. Interested parties have written in supporting the Council, noting how Selly Oak has been degraded by students occupying domestic property and noting anti-social behaviour. Occupiers of a house two houses away from 67 Langleys Road noted they have had to complain to the occupiers of 67 on 'numerous' occasions over the three years from 2014. This includes garden parties going into the night with consequent noise and disturbance. The police have needed to be involved as has the University Guild of Students. Overspill from wheelie bins is noted, which is unsightly and a health hazard. They have lived in the

- area over a considerable time and note the change over time in the balance of the population.
43. Others identify the abundance of HMOs in the area and number of students, noting the character and composition of the street is being gradually eroded. The general disturbance by the comings and goings of 10 people and increased noise and rubbish problems at the front are cited. The next-door neighbour at 65 notes continual problems regarding noise from occupants, with loud music played late into the night and noisy parties in the garden. It is noted that the house has a lot of residents with a lot of visitors. The owner of a property adjacent to 67 Langleys Road also notes noise problems and needing to keep windows closed to get some sleep.
  44. I note that tenancy agreements have clauses in relation to noise and other nuisance, and residents may endeavour to exert some control over behaviour within the properties, but clearly these are not always effective, or may be slow to enforce, as neighbours have had considerable problems in the past.
  45. Residents of the properties have written in supporting the appellant and noting the need for the accommodation, which they consider to be very good and affordable. It is also supported by Direct Housing and Easy Lettings, who note properties are regularly inspected for health, safety, fire, cleanliness etc, providing high standard accommodation at a reasonable cost. The tenants of the properties also indicate that the area is respected and that impacts are limited. Neighbours at the inquiry also noted that they try to work with students in the HMOs, introducing themselves at the beginning of the year and that some problems have been resolved. To my mind this is an indication of how the impact of HMO uses will vary with different users.
  46. While I acknowledge the benefits identified, it is a matter of providing balanced communities. In this case, there clearly is an imbalance that must be addressed and the weight of the benefits is not sufficient to outweigh the harm or the need to control the concentration of HMOs.
  47. The appellant argues there is not a problem with the over concentration of HMOs in Langleys Road. However, it is quite clear the problems identified by the Council in deciding that action is needed in the area in relation to HMOs is supported by the experience of neighbours in this area. An over concentration of this type of property is clearly causing harm to the living conditions of neighbouring occupiers. I note that there are no complaints from the regulatory services, but that does not mean there have not been problems from the use. It is clear that in principle these uses can cause problems and hence the Council's policies, and that in this case there have at times been some problems associated with the actual use of the buildings.
  48. The appellant puts forward as a significant matter the fall back position to a C4 use if the appeal is dismissed. However, I have found that the change of use was from C3 to the current HMO use and the appellant can revert to that use. With the article 4 direction in place, there is no automatic right for a change to C4 use, and given the Article 4 direction and concentration of HMOs in the area, it seems unlikely that a C4 use would be acceptable, as it likely is to have similar problems, albeit at a lesser extent.
  49. I accept that the National Planning Policy Framework promotes a mix and range of houses to meet the need in a particular area, but it is for local

authorities to control the mix based on an understanding of the situation, in terms of the type needed, impact and the policies and supplementary guidance, which is a reasonable approach. I have also taken into consideration the appellant's suggestion of limiting the numbers in the property to 8 and to limit the occupants to students, but this would still be a large number, likely to significantly impact on the character of the use of the property and would not sufficiently mitigate the harm. Limiting occupancy to students only, would not seem to have any significant benefit, given that much of the problems identified by neighbours relates to student occupation. I also accept that the house if C3 could be occupied by a large family with lodgers. This would be a fairly intense use, but it would be expected that there would be some degree of control by the owner living at the residence over lodgers living there.

50. I conclude that the uses of 67 and 89 Langleys Road, either individually or in combination, make an unacceptable addition to the number of HMOs in the area and that this is not in compliance with BP Policy PG3 and UDP Policies 8.23 and 8.24. The appeals on ground (a) fail.

**Ground (g) – Appeals A & B**

51. The time for compliance with the notice would be getting close to the end of June when tenancies naturally come to an end. The Council therefore accepts that the ground (g) should succeed and the period for compliance should allow the use to continue until the end of June. I shall amend the period for compliance to 7 months. The appeals on ground (g) succeed.

*Graham Dudley*

Planning Inspector

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr F Humphreys	Of Counsel
He called	
Mr I Hussain	
Mr A Hussein	Owner – Home Appliance Warehouse
Mr D Barnes	Director – Star Planning and Development
Ms A Khatton	Manager – Easy Lettings
Mr C O’Keeffe	Occupier – 89 Langleys Road
Ms K McCarthy Keane	Occupier – 67 Langleys Road
Ms C Dempster	Manager – Direct Housing
Mr D McMullan	Builder

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr K Garvey	Of Counsel
He called	
Mr A Fulford	Birmingham City Council
Mr K Harrison	Birmingham City Council

### **INTERESTED PARTIES:**

Mr S Evans  
Mr A Appleby  
Mr R Perreau

## **DOCUMENTS**

Document	1	Appellant’s appearances
	2	Statement of Common Ground
	3	Notification letters
	4	Proof of evidence of Claire Dempster and statement of Kate McCarthy Keane
	5	Proof of evidence of Ms Ashiha Khatton
	6	Letter from Conner O’Keeffe
	7	Statement of Daniel McMullan
	8	Rebuttal proof of evidence of Mr Fulford
	9	Rebuttal proof of evidence of Mr Harrison
	10	Enlarged photographs relating to broken windows
	11	Google photograph of 89 Langleys Road
	12	Birmingham Development Plan Extract
	13	Appeal Decision 3129371
	14	Council showing photo log creation on 5 June
	15	Email from J Perreau to Bonnie and Geoff Allcock
	16	Email exchange from Happleby to Mark Franklin 7 November 19
	17	Closing submissions of the Council
	18	Closing submissions of the Appellant
	19	Costs application on behalf of the Council

