

SECTION 78 TOWN AND COUNTRY PLANNING ACT 1990
APPEAL PURSUANT TO REFUSAL OF CERTIFICATE OF LAWFULNESS (EXISTING) FOR USE OF
PROPERTY AS 12 BEDROOM HOUSE IN MULTIPLE OCCUPATION AT 209 SLADE LANE,
MANCHESTER M19 2AE (REFERENCE 129262/LE/2021)

STATEMENT OF CASE ON BEHALF OF THE APPELLANT

1. This statement has been prepared on behalf of Madj Ltd ("the Appellant") in support of an appeal under the provisions of Section 78 of the Town and Country Planning Act 1990 following the refusal of a Certificate of Existing Lawful Development for use of property as a 12 bedroom House in Multiple Occupation at 209 Slade Lane, Manchester by Manchester City Council ("the LPA") on 24th September 2021.

2. The application was registered on 25th March 2021 and was refused for the following reason;

The applicant has failed to demonstrate on the balance of probability that the property was in use/occupation as a large scale HMO property (sui generis use) of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), for a continual period of 10 years (up to the date of the receipt of the CLEUD application on 1 February 2021).

3. The purpose of this statement is to set out the case in support of the Appellant and should be read in conjunction with the supporting letter that was submitted as part of the original submission to the LPA dated 1st February 2021 together with associated supporting evidence which was provided at the outset as well as additional evidence that was submitted during the course of determination.
4. The supporting evidence which is considered pertinent to the consideration of this appeal and which was provided to the LPA is summarised below;

Evidence provided at the point of submission

- 192.com Property Report for 209 Slade Lane ("the Property")
- Zoopla rental particulars for the Property dated 2nd October 2009
- Statutory Declaration of Mr. Mustafa Al Hussainy
- Statutory Declaration of neighbour to the Property, Ms. Melanie Nolan

Additional Evidence submitted during the course of determination

- Summary of Electoral Roll of Property from 192.com
 - Email correspondence from Manchester City Council Citywide Housing Support Team including HMO licence
 - Statutory Declaration from Mr. David Chapman, former resident of the Property
5. At the heart of this Appeal is whether the Property has been used continuously as a 12 bedroom House in Multiple Occupation (sui generis) for a period in excess of 10 years with Section 191(a) of the Town and Country Planning Act 1990 ("the Act") enabling *"a person to seek a decision that any existing use of buildings or other land is lawful"*

6. The 10 year period referenced above is confirmed in Section 171(B) of the Act which outlines the time limits in which there has been a breach of planning control, enforcement action cannot be taken. In respect of breaches involving change of use of land or buildings, it is stated *"In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach."*
7. The onus of proving the lawfulness of an existing use rests with the applicant. The Courts have held in *Gabbittas v Secretary of State for the Environment* [1985] that the relevant test of the evidence on such matters is 'the balance of probability'. Moreover the Courts have held that the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. The applicant's evidence needs to be sufficiently precise and unambiguous to justify the grant of the certificate on the balance of probability.
8. On the basis of the above it is clear that the relevant test when assessing the evidence provided is whether it satisfies the test of 'balance of probability' rather than the more onerous legal standard of 'beyond reasonable doubt' which is required to validate a criminal conviction.
9. In presenting evidence to the LPA, it is asserted that on the 'balance of probability' the LPA should be satisfied that the Property has been used as a 12 bed HMO continuously for a period in excess of 10 years. Having submitted various pieces of corroborating evidence to the LPA at the point of submission of the Application, during the course of determination having been advised by the LPA that they were not satisfied by the evidence, additional submission were made, with this corroborating information already provided.
10. Due to the various sources of evidence including the Appellant, independent 3rd parties, the Council, Electoral Roll and Zoopla all indicating that the Property has been used as a 12 bed HMO over the past 10 years, it is considered that this meets the test of 'balance of probability.'
11. Although the Appellant (Madj Ltd) has only owned the Property since 2016, it has been known to the Appellant's husband Mr. Mustafa Al-Hussainy since 2013 when he was working at a residential sales agency (Easy Homes (Mcr) Ltd) and was instructed to sell the Property by the previous owner. At this point the Property was fully occupied as a 12 bed HMO and continued to be marketed until Madj Ltd eventually purchased it in 2016 as a going concern and continued to operate in the same way. This is confirmed in the statutory declaration of Mr. Mustafa Al-Hussainy which was submitted to the Council.
12. Whilst it was known to Mr. Mustafa Al-Hussainy when marketing the Property in 2013 that the then owner had operated it as a 12 bed HMO for a prolonged period of time prior to this, it is acknowledged that this in itself does not provide an appropriate level of proof that for the past 10 years the Property had been used in this manner.
13. However, a statutory declaration has been provided by Ms. Melanie Nolan who has lived at no. 207 Slade Lane which is immediately adjacent to the Property, since 2001 and continues to do so to this day. Ms. Nolan having lived next to the Property for the past 21 years is very familiar with it and recalls it being 2 to 3 years after she moved in and being let out on a room by room basis to students and factory workers. Furthermore, one of her friends Mr. David Chapman lived in the Property between around 2003 and 2007 and she visited him at the Property on several occasions.

14. Ms. Nolan has therefore confirmed in her Statutory Declaration that the Property has been used as an HMO since around 2003 i.e for approximately 19 years.
15. Whilst Ms. Nolan's evidence in its own right is considered to be compelling, further evidence was provided to the LPA in the form of a Zoopla rental particulars dated 2nd October 2009. These particulars state "£260 pcm – 12 bed property."
16. As well as providing the LPA with the aforementioned evidence, they were also provided with a Property Report from 192.com. Whilst this in itself does not provide concise evidence that the Property has been used as a 12 bed HMO for a period in excess of 10 years, it does nevertheless bind many parts of the other evidence together by confirming;
 - That Madj Ltd have owned the property since November 2016
 - That there have been multiple residents of this property, many residing in the property concurrently (note this is not an exhaustive list)
 - That Melanie Nolan resides at 207 Slade Lane. (note this states since 2003 but in fact Ms. Nolan has lived in this property since 2001)
17. Having submitted the aforementioned pieces of evidence to the LPA, during the course of determination if the Application, they indicated that they were not satisfied that the 'balance of probability' test had been met. Therefore at considerable effort, the Appellant has sought to obtain further evidence to support their case.
18. On 25th March 2021 additional evidence was submitted to the planning case officer and included a summary of the electoral roll for the Property taken from 192.com. This does not provide an exhaustive list of people who resided at the Property, many of whom will have stayed for a short term period and therefore not registered and it must be noted that signing on the electoral roll is not mandatory. Given that many of the occupants have been students, it is likely that they will have been registered on the electoral roll at their parents' homes.
19. Also provided to the case officer on this same date was correspondence from Manchester City Council's Citywide Housing Support Team dated 8th December 2020 which confirmed that an HMO licence was issued for the Property by them in 2007, with this being renewed on 5 yearly cycles, i.e also in 2012 and 2017. Helpfully, a copy of the 2012 licence was provided by the Council with this confirming the Property was registered to accommodate 12 people. Whilst these licences do not confirm that the Property was thereafter used for these purposes, the Council's fee schedule for licencing indicates that a licence costs in the region of £1,000. On the balance of probability, based upon these costs, this HMO licence would not have been applied for and granted on 3 separate occasions (2007, 2012 and 2017) unless it was being used for these purposes due to the significant costs involved.
20. Despite this evidence which was provided to the Council on 25th March 2021 further corroborating the evidence already provided, pushing the case even further beyond the 'balance of probability' threshold, the case officer responded on 20th May 2021 stating;

"The evidence that has been provided indicates that the property has been occupied as shared accommodation and this arrangement commenced around 2007.

However, the CLEUD application seeks to establish that 12 bedroom HMO (sui generis) use has been lawfully established and continuously undertaken over a period

exceeding 10 years. The submitted evidence does not demonstrate that the use of the property is commensurate with a large scale HMO, in relation to the number of people being consistently in residence or the longevity of its continuous use.

The submitted information has been cross referenced with Council Tax records and it has not been possible to verify the continuous occupation of the property as a large scale HMO.

The submitted information from HMO Licensing indicates that licences were issued between 2007 and 2015 and again in 2017. The details do not confirm the number of people in residence. The 'gaps' in evidence from 2018 onwards have not been filled by the submitted evidence."

21. In response to the points made in the officer's email as quoted above, it is respectfully requested that the Inspector considers the raft of evidence that had been submitted to the LPA by this point. The number of people residing in the Property had been outlined in the various statutory declarations and the Zoopla particulars and the 2012 HMO licence clearly states that it was for 12 people. The 2017 HMO licence, as with the previous 2 is valid for 5 years and therefore did not need renewing in 2018 as suggested in the officer's response and in any event, the Property was in the ownership of the Appellant at this time and the use of the Property corroborated in the declaration from Mr Al-Hussainy.
22. Notwithstanding the apparent reluctance of the LPA to accept the proposition that the Property had been used as a 12 bed HMO for at least 10 years, at considerable effort, the Appellant was able to track down Mr. David Chapman who had previously resided in the Property and is referenced in the declaration provided by Ms. Melanie Nolan.
23. In the declaration provided by Mr. David Chapman he confirms that he lived in the Property between 2004 and 2006 and recalled it having 12 bedrooms over 3 floors. He recalls the names of various housemates and confirms that he became friends with the next door neighbour Ms Melanie Nolan.
24. Despite the collective and overwhelming strength of evidence that was provided to the LPA, they still considered that insufficient evidence had been presented and refused the Certificate for the reason set out at the start of this statement.
25. Paragraph 006 Reference ID: 17c-006-20140306 of the Planning Practice Guidance provides guidance in relation to the assessment of certificates for existing use, stating that:

"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."
26. At no point has the LPA presented evidence which contradicts or challenges that which has been provided by the Appellant, quite the contrary, their housing colleagues have provided evidence that HMO licences have been applied for and granted for the Property on at least 3 separate occasions (their records don't go back beyond 2007).

27. On the basis of the above points and the evidence that was presented to the LPA it is considered that on the 'balance of probability' the Property has been continuously in use as a 12 bed Property for at least 10 years. No evidence to the contrary has been presented by the LPA, just a series of baseless doubts and assertions which in no way undermines that which has been presented by the Appellant.
28. On the basis of the above, it is respectfully requested that the Appeal be allowed and the Certificate of Lawfulness granted.

J. Pyper
February 2022