
WRITTEN ADVICE FOR LAND DEVELOPMENT CONTROL AUTHORITY

The issue

1. The Planning Officer has requested advice concerning a development application for change of use for a residential care home to a house of multiple occupancy (HMO) at Barn view Longwood; the request for advice is now jointly made by with Land Development Control Authority (LDCA’).
2. Advice sought is specifically in regard to the representation received, after public consultation, from the Equality and Human Rights Commission (EHRC); in particular as to the second issue raised there under the heading ‘on what basis has it been decided to apply UK Planning Standards’.
3. The representation asserts that *‘the planning department is proposing to use UK planning legislation on which to base its decision as to whether a proposed HMO development can go ahead’*. Attention is drawn to the Housing Act 2004 and two regulations thereunder. The Planning Officer asks whether there are legal ramifications for using general guidance or standards from the UK in the absence of any guidance in St Helena for HMOs.

Planning Officer’s Report – November 2024

4. I have had regard to the Planning Officer’s Report prepared for November 2024 meeting. I do not agree with the premise within the EHRC submission that the Planning Officer is proposing to use UK legislation.
5. Reference is had to UK legislation within the Report only to the following extent.
 - a. At page 7, (in remarking upon the original submission for three-person to a room - which is anyway not now relevant in the amended application) – *‘the Housing Act 1985 would suggest that this is overcrowding.*

- b. At page 12, where a UK definition (which may or may not be in legislation) of a HMO. This is proposed to be adopted to describe the land use, sui generis, of a HMO.
- 6. Reference is also made to, at page 12, to SHG's Housing Strategy Manual.
- 7. Reference is not made to the Housing Act 2004 or regulations under that act which, in England, allow for the licencing of HMOs by local authorities.

Advice

- 8. I advise that:
 - a. Reference to the Housing Act 1985 is not material to the decision being made since the modified application now excludes triple occupancy rooms. Nonetheless, reference to that act was only had to 'suggest' rather than to determine that overcrowding may have been an issue. There was no attempt to apply this as law and such reference, even if germane to the decision being made, would not be unlawful nor unreasonable.
 - b. Land use as a HMO does not fall within the defined land use classes within our law or regulations. As such it is required that it stand sui generis, in a class of its own. Officers and the Authority will need to define that use accurately but to adopt a definition as used in England is not, strictly, to apply English legislation: it is simply to align separate definitions.
 - c. The Saint Helena Government's Housing Strategy Manual is not a planning policy or but considering the imperative of the Primary Housing Policy (H1), including that to meet the housing needs of the island and to have regard to the need to '*make a socially balanced and sustainable community*' then having regard to the government's policy is not inappropriate in assessing the application overall.
 - d. The Planning Officer does not refer to the Housing Act 2004 or the regulations under it which the ECHR do refer to. In any event the regulations do not apply in Saint Helena and the act may apply, or may be able to be applied. The reference had to this legislation is however to reflect that in the law of England HMOs are regulated

in a way they are not regulated in St Helena. Whether or not to regulate for them in St Helena is not however a planning matter although it may be a matter for the executive or legislature. As far as the planning authority is concerned Saint Helena does have have existing planning policy and it is possible for the LDCA to assess the change of use application in light of that policy and according to our planning legislation.

9. To the extent described here I do not see any adverse effects to proceeding to determine the application accordingly.

20th November 2024

E.J.A Garner

Crown Counsel

Attorney General's Chambers