



# Appeal Decision

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2022

---

**Appeal Ref: APP/Y1110/X/22/3293554**

**42 Hoopern Street, Exeter, EX4 4LY**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Messrs Michael and Allen Laskey and Taylor against the decision of Exeter City Council.
  - The application ref 21/1892/LPD, dated 9 December 2021, was refused by notice dated 4 February 2022.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is a change of use of C3 dwellinghouse to C4 small HMO limited to 3 residents.
- 

## Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the proposed use which is found to be lawful.

## Preliminary Matters

2. As the appeal depends on the submissions of the parties in respect of matters of law, a site visit was not necessary.
3. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.

## The site

4. The appeal property is a two storey mid-terrace dwelling in an area of similar dwellings close to the university. It is occupied by two unrelated persons who share basic facilities.

## Main Issue

5. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

## Reasons

6. The appellant proposes to allow a third resident to use a spare bedroom involving a change from use class C3 to C4. Normally, this would be permitted development within Schedule 2, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. However, there is an Article 4 Direction, confirmed on 16 December 2010, for the area within which the appeal site is located. This requires planning permission for the change of use to a small HMO for 3-6 unrelated residents if the change is 'material', such as whether an additional

person may harm the character and/or appearance of the building or area, and arising from any highway impacts. The Article 4 Direction was introduced due to an overconcentration of HMOs causing a community imbalance. Planning policies are not relevant.

7. If the change of use between uses is not material, then it is not development within the meaning of s55(1).
8. The Council considers that the appellant has not provided sufficient evidence to justify that the proposal would not result in an intensified use of the property such that an additional resident would change the property to a different character and thereby lead to a material change of use. In particular, the Council says that the absence of floor plans makes it difficult to appreciate the affect that an additional person would have on the availability of communal space. The Council refers to a change in the 'comings and goings' as representing an increase in the scale of the activities on site arising from a 50% increase in the number of residents from two to three.
9. The appellant states that the use of the spare bedroom would not lead to any loss of communal space. In any event they consider that the internal arrangements and residential amenity of future occupiers are of no concern in an LDC application and that the Council has misdirected itself on what 'intensification' is and how it can lead to a material change of use, although this is denied by the Council.
10. The Council is entitled to draw its own conclusions in respect of the change of character of the property but little clarity is provided in respect of how one additional person would lead to this. The Council has rejected the appellant's assurance that the proposal would not lead to a loss of communal space. The Council did not seek this information prior to determining the application, nor did they carry out an internal inspection to assess the internal layout and communal facilities. Whilst an additional person would lead to additional pressure on existing facilities it does not follow that this would necessarily be so detrimental to the living conditions of the residents to contribute to a material change of use of the property. I therefore attach little weight to this aspect of the Council's case.
11. A third resident may well lead to additional 'comings and goings' and the Council refers to extra movements generated by friends and family, additional deliveries and increased levels of activity on the site, all of which add to noise and disturbance associated with vehicular and pedestrian movements in the locality. Furthermore, the additional pressure on communal space will lead to the occupiers seeking outdoor space, adding to movements at the property. Whilst all these outcomes may arise from the proposal, the Council fails to quantify them or to direct attention to specific adverse effects of increasing the number of occupants by one person in any level of detail to support their judgement that the proposal would lead to a change in the character of the area. The character of the area will remain as a terraced residential area with little change to the housing stock or its occupation as a result. Whilst the Article 4 Direction was introduced with a clear purpose of limiting the effects of community imbalance, the proposal would not, in my view, materially affect that purpose.

12. Although the burden of proof rests with the appellant to provide evidence, such evidence should be requested at the appropriate time in the process. Furthermore, the courts (*Gabbitas v SSE & Newham LBC* [1985] JPL 630) have held that evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and the evidence is sufficiently precise and unambiguous, it should be accepted. I believe this to be the case in this instance.
13. An LDC for three residents should not be confused with a planning permission for a C4 use which would permit up to six residents as the courts have held that a certificate is a point of reference against which the materiality of any future intensification can be assessed.
14. Reference has been made by the parties to case law and to specific appeal decisions in support of their particular argument. Whilst on the face of the decisions there may be a variation in approach by inspectors, these decisions were reached on the circumstances of those cases, such as the character of their location and the number of occupants.
15. The appellant has shown on the balance of probabilities that the proposed use would not be a material change of use and would be permitted development under Schedule 2, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

### **Conclusion**

16. For the reasons given above I conclude on the evidence now available that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed change of use of C3 dwellinghouse to C4 small HMO limited to 3 residents was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195 (2) of the 1990 Act as amended

*P N Jarratt*

INSPECTOR



# Plan

This is the plan referred to in the Lawful Development Certificate dated: 13 June 2022

**by P N Jarratt BA (Hons) DipTP MRTPI**

**Land at: 42 Hoopern Street, Exeter, EX4 4LY**

**Reference: APP/Y1110/X/22/3293554**

Scale: Not to Scale

---

---

# Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

---

---

**IT IS HEREBY CERTIFIED** that on 9 December 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would not be a material change of use and would be permitted development under Schedule 2, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

*P N Jarratt*

Inspector

Date: 13 June 2022

Reference: APP/Y1110/X/22/3293554

## **First Schedule**

Use of a dwellinghouse as a small HMO limited to three residents.

## **Second Schedule**

Land at 42 Hoopern Street, Exeter, EX4 4LY

IMPORTANT NOTES – SEE OVER

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

# Plan

This is the plan referred to in the Lawful Development Certificate dated: 13 June 2022

**by P N Jarratt BA (Hons) DipTP MRTPI**

**Land at: 42 Hoopern Street, Exeter, EX4 4LY**

**Reference: APP/Y1110/X/22/3293554**

Scale: Not to Scale

---

