



Appeal Decision

Site visit made on 25 February 2025

by Chris Preston BA (Hons) Town and Country Planning, Bachelor of Planning (BPI) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2025

Appeal Ref: APP/J0540/X/24/3339573

96 The Dell, Woodston, Peterborough, PE2 9QE

- 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 Christine Hertoghe against the decision of Peterborough City Council.
 - The application ref 23/01749/CLE, dated 19 December 2023, was refused by notice dated 12 February 2024.
 - The application was made under section 191(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 small HMO for up to 4 people only.
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Decision

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

Reasons

2. As with any application or appeal relating to a Certificate of Existing Lawful Use (CLUED), the planning merits of any given use are not relevant to my decision. The main issue is whether the use described was lawful at the time the application was made and whether the Council's decision to refuse to grant a CLUED was well-founded based on relevant facts and any relevant judicial authority.
3. The relevant test is the balance of probability. As set out within the Government's Planning Practice Guidance (PPG) an applicant is responsible for providing sufficient information to support an application. In respect of an 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 probability¹.
4. A CLUED is sought for the use of the property as a small House in Multiple Occupation (HMO) for up to 4 people. Such a use would fall within Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). The UCO differentiates small HMOs from dwellinghouses which fall within Class C3. However, under the terms of Class L, Part 2 of Schedule 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), a change of use from Class C3 to C4 or vice versa is "permitted

¹ Paragraph: 006 Reference ID: 17c-006-20140306

development” which, in normal circumstances, would benefit from planning permission granted by virtue of Article 3(1) of the GPDO.

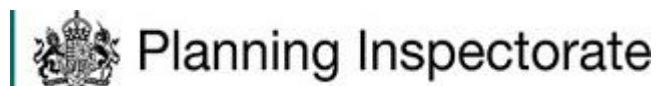
5. In this case, a Direction under Article 4 of the GPDO came into force on 01 January 2024 covering the area within which the appeal site is located. The effect of that Direction is to remove permitted development rights for the change from Use Class C3 to C4. The effect of that Direction is not retrospective. In other words, any properties that had already benefitted from a permitted change from C3 to C4 and were in use for that purpose at the time the Direction came into force on 01 January 2024 could continue to be lawfully used for that purpose after that date, providing there had been no intervening material change of use.
6. The point of contention in this case is whether the property was, in fact, in use as a HMO within Use Class C4 at the time of the application. Before going on to examine the evidence it is worth noting the timeline of events. The appellant is the owner and landlord of the property. She became aware of the Council’s intention to confirm the Article 4 Direction and subsequently made the application for a CLUED to confirm the existing use. By her own admission that application was made in some haste due to the fact that she only became aware of the date the Direction would come into effect in December 2023. I needn’t go into the details of why that was the case or whether consultation letters were sent because it does not impact on my decision.
7. In any event, the appellant spoke to a planning officer and submitted the CLUED application on 19th December 2023, supported by Council Tax bills, an electricity bill, a layout plan and evidence of land registry title. The Council subsequently emailed the appellant on 9th January 2024 to seek further information. The appellant claims that she did not receive that email and therefore did not respond to its contents. The application was subsequently refused on 12th February 2024.
8. The appeal before me now contains much of the evidence requested by the Council in their email of 9th January, namely, tenancy agreements, details of rent for each of the 4 rooms since 2016, a letter from the appellant/ landlord confirming the use of the property, details of Insurance identifying that the property had been let to students or more than 1 person or family, and a letter to the Council relating to a Council Tax exemption.
9. The Council has had sight of that information and had the opportunity to respond to it. However, somewhat surprisingly, it declined to submit a statement of case on the basis that “the case officer report that has already been provided will suffice”². That officer report was prepared at a time when the Council had not seen the latest information. On that basis, it would appear that the Council does not doubt the veracity of the information provided with the appeal and has provided no information of its own in response. In line with advice set out in the PPG, if that information is sufficiently precise and unambiguous there would be no good reason to dismiss the appeal.
10. Having examined the evidence I am satisfied that it meets those criteria. The tenancy agreements depict that each of the four bedrooms was let on an individual basis with the tenants having access to shared facilities. The tenancies for each room are entered into on different dates which is consistent with the rooms being let to individuals who are not related to one another or living as a single household.

² Email from Peterborough Technical Services (Appeals) to Team E3 of the Planning Inspectorate, dated 29 May 2024.

11. Details of rent paid in relation to each room is also provided in the form of a ledger dating back to 2017 but also showing continuing payments at the time of the application. The Insurance records from 2018 through to the time of the application refer to the occupants as either students or “two or more people sharing”. A letter from the appellant to the Council Tax department, dated 31 December 2015, requesting an exemption on the basis that the property was to be let to students is also provided.
12. Reference has been made to the fact that the property did not appear on the Council’s public register of HMOs. According to the appellant that is because the property was only let to four people whereas the register is applicable to properties housing 5 or more. The Council has not disputed that and there is nothing to lead me to doubt that position.
13. In any event, setting that aside, the body of evidence provided is compelling, appears consistent in its nature and corroborates the appellant’s statement that the property had been used as a small HMO for up to four people from approximately 2016 up to the date of the application. In the absence of any evidence to the contrary from the Council I am satisfied, on the balance of probability, that the property was in use as a small HMO for up to four people on the date of the application.
14. Furthermore, there appears no dispute that the property in question would originally have been constructed and occupied as a dwellinghouse within Class C3 given its design and position within a residential estate. Prior to the designation of the Article 4 Direction the change of use to a small HMO would have been permitted under the terms of Class L, Part 1 of Schedule 2 of the GPDO such that the use would have benefitted from planning permission and amounted to a lawful use at the time the application was made.
15. For the reason given above, I conclude, on the evidence now available, that the Council’s refusal to grant a certificate of lawful use 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).

Chris Preston

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 19 December 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, on the evidence presented, the appeal property, 96 The Dell, was in use as a small HMO on the date of the application. The Article 4 Direction to remove permitted development rights under Class L, Part 2 of Schedule 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) did not come into force until 01 January 2024, after the application was made. Prior to that date properties within the area in question benefitted from permitted development rights for a material change of use from Class C3 to C4 or vice versa. As such, at the point at which the use of the property changed from a dwellinghouse in Class C3 to a small HMO in Class 4 it would have benefitted from planning permission granted via the GPDO and the use was therefore lawful at the date of the application.

Signed

Chris Preston

Inspector

Date: 07 March 2025

Reference: APP/J0540/X/24/3339573

First Schedule

Use as a small House in Multiple Occupation (HMO) for up to 4 people.

Second Schedule

Land at 96 The Dell, Peterborough, PE2 9QE

IMPORTANT NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 07 March 2025

by Mr Preston

Land at: 96 The Dell, Peterborough, PE2 9QE

Reference: APP/J0540/X/24/3339573

Scale: Not to Scale

