



Appeal Decision

Site visit made on 18 March 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2025

Appeal Ref: APP/G5180/X/23/3325115
105 Ridgeway Drive, Bromley BR1 5DB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter referred to as 'LDC'] .
 - The appeal is made by Mr Steve Curtis against the decision of the Council of the London Borough of Bromley.
 - The application ref DC/23/01241/PLUD dated 28 March 2023 was refused by notice dated 15 June 2023.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990, as amended.
 - The development for which a certificate of lawful use or development is sought is a change of use from a small HMO (use class C4) to a large HMO (sui generis) for 7 residents.
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Formal decision

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

The planning position

2. Extraneous to the Town and Country Planning Use Classes Order 1987 (as amended) a House in Multiple Occupation (HMO) is a legal category of housing defined in part 7 of the Housing Act 2004, and is considered to be a residential property rented out by at least three people who are not from the same household, and is not entirely made up of self-contained flats. In other words the residents will share common facilities such as a kitchen, bathroom and wc, and maybe a communal lounge.
3. HMOs are licensable and a property is a HMO if a 'HMO declaration', served by the local housing authority (LHA), is in force in respect of it under s255 of the Housing Act. This confirms that the LHA is satisfied that the building meets the necessary tests, and that the occupation by persons who do not form a single household constitutes a significant use of that accommodation. The appeal property is licensed, accordingly.
4. However, the position under planning legislation is different, and an existing HMO in planning terms is not necessarily influenced by the above licensing process.
5. The Town and Country Use Classes Order defines two types of HMOs. Class C4 relates to small, shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. Larger HMOs, occupied by more than seven persons, are

not categorised. Instead, they are classed as sui generis and do not fall within any use class. Therefore, unlike Class C4 HMOs – for which this is free movement from and to Class C3 – any change to a large, seven person plus HMO type would potentially require the benefit of planning permission and, to this end, requires assessment as to resultant impact.

6. In this particular instance, although on 1 September 2022 an Article 4 Direction came into effect removing permitted development rights for a change from Class C3 (residential) to Class C4 a LDC was issued on 17 March 2023 confirming that the existing use of the dwelling as a HMO (Class C4) was immune from planning enforcement action due to the passage of time, and was thereby effectively lawful in planning terms.

Main Issue

7. The main issue is whether the Council's decision not to issue a LDC was well founded.

Reasons

8. In an appeal under s195 of the Act against the refusal of a LDC the planning merits and/or impacts of the use applied for do not fall to be considered. Instead, the decision is based strictly on the evidential facts and on relevant planning law. I shall reach my decision on the various evidence before me and also the observations at my site visit.
9. The matter to be decided upon is whether the proposed development – that is the increase from six to seven residents - if carried out at the date of the application ie 28 March 2023 would have been lawful. In other words whether the said change would amount to a material change of use requiring the benefit of planning permission.
10. Whilst this is a change in use class from C4 to sui generis it does not always qualify as a material change of use. In many cases, increasing the number of occupants would not necessarily result in a material change if the building already has sufficient facilities to support the increase. This will include accommodation such as a communal lounge, kitchen space, bathrooms and the availability of on-site parking space. If the character of the property would remain unchanged and an increase in residents would not likely give rise to an appreciable increase in comings and goings, any significant undue noise and disturbance nor an increase in any kerbside parking stress, then planning permission may not be needed for the intended change.
11. A parallel would be one additional person residing in a family home where, in all likelihood, any change would be negligible or imperceptible and the character of the property would not thereby be altered. Further, in the main, HMO occupiers have less reliance on cars, and they generate the same amount of refuse.
12. The appeal property here is a semi-detached chalet type dwelling which has been extended. Set back from the street the property has a driveway to allow for off-street parking and also a single garage. Admittedly, any cars on the driveway would be in tandem, but that is not an uncommon arrangement, locally.
13. Internally, there are six bedrooms – comprising a mix of both double and single size, and some with shower rooms – a large communal lounge and kitchen area, a communal bathroom and a rear garden with access to all occupiers. The additional resident would be accommodated in a vacant first floor room which would be suitable as a single bedroom.

14. From my site visit it was apparent to me that the HMO is well-run, clean and tidy and could easily accommodate and assimilate one additional tenant without giving rise to any obvious on-site or off-site implications. Accordingly, I disagree with the Council's view that this would result in a definable change in the character and nature of the use.
15. I have had regard to points raised in letters of objection from local residents. Mention is made of the site being unable to provide off-street parking for the tenants as a whole. However, I note there are few kerbside parking restrictions – the number of vehicular crossovers tends to be an impediment – but, as mentioned, the incidence of car ownership is unlikely to reach a 1:1 ratio.
16. Pressure on the sewerage system, the moving of the original side entrance door to the front of the dwelling, nor noise from a washing machine at unsocial hours are not significant material considerations to the particular proposal in hand and the appeal would not turn on such matters. Besides, the content of the objections seem to relate more to the use of the property as a HMO, in principle. Also any difficulties with refuse collection remains a matter for resolution between the owner or head tenant and the Council. There is external space available around the property.
17. I have similarly had regard to the previous appeal decision letters provided by both main parties. However, whilst I note the various Inspectors' comments on their respective cases, these are site sensitive and each new case should be assessed due to the individual circumstances involved on a fact and degree basis. Accordingly, these have not changed my conclusions.
18. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in this instance was not well founded, and the appeal should succeed.
19. Accordingly, I shall exercise the powers transferred to me under section 195(2) of the 1990 Act, as amended.

Timothy C King

INSPECTOR

Lawful Development Certificate

APPEAL REF. APP/G5180/X/23/3325115

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(as amended by section 10 of the Planning and Compensation Act 1991)

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

IT IS HEREBY CERTIFIED that on 28 March 2023 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown edged in red on the plan attached to this certificate was lawful within the meaning of section 192(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposal did not constitute development as defined by section 55 of the 1990 Act, as amended.

Date: **23 April 2025**

First Schedule

Change of use from small HMO (Use Class C4) to a large HMO (sui generis) for 7 (seven) residents.

Second Schedule

105 Ridgeway Drive, Bromley BR1 5DB

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the 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, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. 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.
4. 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 attached to the Lawful Development Certificate dated: **23 April 2025**

by Timothy C King BA (Hons) MRTPI

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Scale: Do not scale

