



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2025

Appeal Ref: APP/Z1775/X/24/3347863

73 Margate Road, Southsea, City of Portsmouth PO5 1EY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Jim Briscoe against the decision of Portsmouth City Council.
 - The application ref 23/01584/CPL, dated 18 December 2023, was refused by notice dated 19 March 2024.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which an LDC is sought is internal alterations to form a new bedroom.
-

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the extent of the operations and the proposed use which are found to be lawful.

Application for Costs

2. An application made by Mr Jim Briscoe against Portsmouth City Council is the subject of a separate Decision.

Preliminary Matters

3. The submitted form states that the application was made in respect of proposed operations, described as above, and thus under section 192(1)(b) of the Act. However, an accompanying letter confirms that the issue to be determined is whether the use of the building proposed to follow the internal alterations would be lawful. That letter and the Council's decision notice describe the proposed use as a '7-bed/7-person house in multiple occupation' (HMO). I shall therefore determine the appeal on the understanding that the application was made under section 192(1)(a) and (b) of the Act in respect of a change of use to the proposed use and carrying out the specified operations.
4. The determination may be made on the basis of the facts and without the benefit of a site visit. The parties do not object to my proceeding in this way.

Main Issue

5. The main issue is whether the Council's refusal to issue an LDC was well founded. This will turn on 2 matters. The first is whether the operations would have been development requiring planning permission if begun on the date the application was made. The second is whether the change of use of the premises to use as a 7-bedroom/7-person HMO would have been development requiring planning permission if instituted on the date the application was made.

Reasons

6. Under section 191(2) of the Act an operation or use is lawful if no enforcement action may be taken in respect of it and it does not contravene any requirement of an enforcement notice in force. The operations and the use are not subject of an enforcement notice, so it remains to be considered whether they would be immune from enforcement action because they are not development, or do not require planning permission, or for any other reason.

The operations

7. These are to erect internal walls to divide a bedroom on the second floor into 2 and to install a new en-suite bathroom for one of the new bedrooms. The submitted drawings confirm the operations affect only the interior of the building and do not change its external appearance. They do not involve making good war damage or providing additional space underground.
8. Section 55(2)(a) of the Act provides that carrying out of such operations for the maintenance, improvement or other alteration of any building does not involve development of the land. Accordingly, the operations would not have required planning permission if begun on the date the application was made.

The change of use

9. The building is currently used as an HMO with 6 residents. Use of a dwellinghouse as an HMO by not more than 6 residents is a use within Schedule 1, Part 3, Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The use of the building as an HMO by 7 residents would therefore fall outside of Class C4. However, and having regard to section 55(1) of the Act, development requiring planning permission would only occur if the addition of a 7th resident would result in a *material* change in the use of the building. For a change of use to be material there must, as a matter of fact and degree, be some significant difference in the character of the activities from what happened before. Case law¹ confirms that this requires the proposed use to be compared with the current use as it actually is or has been, not as it hypothetically might be.
10. The Council considers that adding a 7th resident would result in increases in parking demand, domestic waste production, noise, and anti-social behaviour. However, its standards for parking and refuse storage are the same for 6-person and 7-person HMOs, indicating that a significant difference should not normally be expected. No exceptional circumstances that might justify a different assessment in this instance have been identified.
11. No evidence of the 6-person HMO's effects in terms of noise and anti-social behaviour has been presented, so there is no baseline for assessing whether the addition of a 7th resident would make a significant change in either. However, the Council's evidence includes a view that the use of the same space as 1 or 2 bedrooms is unlikely to result in any demonstrable change in the level of noise for the adjacent neighbours. Similarly, a view is expressed that a 7th user of the HMO's communal areas is unlikely to make a significant change in terms of the effect on neighbours. The Council confirms it has no evidence linking higher occupation levels within HMOs of this nature to increased anti-social behaviour.

¹ *SSETR v Waltham Forest LBC* [2002] EWCA Civ 330.

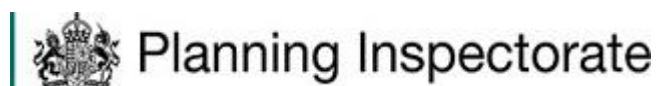
12. Accordingly, and on the balance of probabilities, the change from a 6-person HMO to a 7-person HMO would not result in a significant difference in the character of the activities in terms of parking demand, domestic waste production, noise, anti-social behaviour or any other factor. On that assessment, the change of use of the building to use as a 7-bedroom/7-person HMO would not have constituted a material change of use if carried out on the date the application was made.

Conclusion

13. For the reasons given above, I conclude that the Council's refusal to grant an LDC for internal alterations to form a new bedroom and the change of use of the building to use as a 7-bedroom/7-person HMO 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 Act.

Mark Harbottle

INSPECTOR



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 18 December 2023 the operations and 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The installation of internal walls and an en-suite bathroom would affect only the interior of the building, would not change its external appearance, would not involve making good war damage and would not provide additional space underground. The change of use of the building from use as a 6-bedroom/6-person house in multiple occupation to use as a 7-bedroom/7-person house in multiple occupation would not result in a significant difference in the character of the use and would therefore not be a material change of use. The operations and use therefore do not fall within the definition of development set out in section 55(1) of the Town and Country Planning Act 1990 (as amended) and so do not require planning permission.

Signed

Mark Harbottle

Inspector

Date: 25 April 2025

Reference: APP/Z1775/X/24/3347863

First Schedule

Internal alterations to form a new bedroom and the change of use of the building to use as a 7-bedroom/7-person house in multiple occupation

Second Schedule

Land at 73 Margate Road, Southsea, City of Portsmouth PO5 1EY

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: 25 April 2025

by Mark Harbottle

Land at: 73 Margate Road, Southsea, City of Portsmouth PO5 1EY

Reference: APP/Z1775/X/24/3347863

Scale: Not to Scale

