



Appeal Decision

Site visits made on 15 and 16 October 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 OCTOBER 2025

Appeal Ref: APP/A2280/X/25/3361753

36 Kingswood Road, Gillingham, Medway, ME7 1DZ

- 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 Mr Jamie Chapman of MSC Pro Holdings against the decision of Medway Council.
 - The application reference MC 24/2059, dated 2 October 2024, was refused by notice dated 17 January 2025.
 - 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 to confirm that the proposal to add one additional person to occupy the existing confirmed C4 HMO does not constitute a material change of use.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposal to add one additional person to occupy the existing house in multiple occupation (HMO) are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether it has been demonstrated that an increase from six to seven occupants in the existing HMO constitutes a material change of use of the land and hence amounts to development requiring planning permission.

Reasons

4. There is no dispute between the parties that the property can lawfully be used as an HMO as permitted by Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). Class C4 of the UCO states that it is use of a dwellinghouse by not more than six residents as an HMO. The evidence is that the property is lawfully in use as a six resident HMO. This proposal seeks legal confirmation that on the date of the LDC application, the use of the property as a seven resident HMO would not constitute a material change of use and hence would not be development requiring planning permission. The appellant seeks to

provide a seventh bedroom in the property on the lower ground floor (as shown on drawing No. 376/102 revision G) to accommodate a seventh resident. My site visit revealed that an additional bedroom with bathroom had already been formed within the appeal property. No external alterations are proposed.

5. It has been held in case law that a change of use can only be material by bringing about a definable change in the character of the main use of the land. In other words, there needs to be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. It is noteworthy that section 55(2)(f) of the Act and the UCO only provide that a change within a use class is exempted from development.
6. As part of my site visit, I was able to experience that the character of the area is one where there are long blocks of Victorian terraced properties and with car parking on both sides of Kingswood Road. The evidence is that there is a mixture of dwellings, flats, a guest house and HMOs in this street. The built form is of a high density and there is a steady flow of vehicular and pedestrian comings and goings from occupants and visitors alike.
7. The undisputed evidence is that the appeal property is flanked by a wider building on one side containing flats, and a building on the other side which is in use as a guest house. Kingswood Road falls within a controlled parking zone (CPZ) and where resident car parking permits are needed between 8am and 10pm Monday to Saturday.
8. While the proposal would result in an increase in the intensity of the use, I do not find that use of the rear outside amenity space by one additional resident would lead to any noticeable change in the character of the use of this space from a noise or disturbance point of view. Moreover, the property would remain residential: the appeal site is one of several properties which have been subdivided into flats or HMOs and of course there is a guest house next door. Therefore, a change in the coming and goings from the appeal site from an additional resident would go unnoticed in my view.
9. I accept that an additional occupant would result in the production of more waste. However, the property has space to the rear to accommodate an additional refuse bin if needed, and of course it may be that there is enough capacity in existing bins to deal with the waste arising from an additional resident.
10. It is reasonable that I treat the existence of the CPZ as evidence that there are car parking demand pressures or stress in the area. The appellant does not dispute the Council's comment that there are '*parking pressures*'. I visited the site in both the daytime and the evening. My evening site visit (18.45 hours) demonstrated that on-street car parking spaces in this street were fully utilised. I accept that this was only a snapshot in time, but it nonetheless supports the Council's comment that there are parking pressures. It is presumably why the CPZ was introduced in the area in the first place.
11. An additional resident could own or have access to a car. There is no evidence before me to suggest that a seventh resident would be prohibited from seeking to obtain a car parking permit. The need to park an additional car would put further pressure on a street where the evidence is that there is already car parking stress. In this context, I find that an additional resident would materially change car parking activity in the area relative to the existing situation. Given the pressure for

car parking in this street, the evidence is that the proposal would result in an associated increase in vehicle movements as residents seek to find somewhere to park elsewhere. This change of activity would change the way that residents experience the street in car parking convenience terms and, in my judgement, would represent a material change to their living conditions.

12. In addition to the above, and noting car parking demand pressures, I find that the above harm would likely be exacerbated owing to the increase in visitor numbers to the appeal property. While the increase in number of visitors may not be proportionately high relative to the existing use of the appeal property, there is nonetheless the potential for further car parking stress arising from an increase in the number of visitors in this street. There is no evidence before me to suggest that visitors would be prohibited from obtaining visitor permits.
13. In this case, the evidence indicates that even a small increase in car parking demand would have material consequences. Moreover, and given the absence of available on-street car parking spaces, as was evident during my evening site visit, I find that the proposal is likely to result in more delivery vehicles, taxis and emergency service vehicles having to park temporarily in the road at this time, thereby leading to material obstructions and inconvenience for existing residents in Kingswood Road.
14. For the reasons outlined above, and, as a matter of fact and degree, I therefore conclude that the proposal would amount to a material change of use. Given car parking demand and stress issues, the proposal would, as a matter of fact and degree, result in a significant difference in the character of the activities from what has gone on previously. Consequently, I find that the proposal amounts to development as defined in section 55(1) of the Act and planning permission is required for it.
15. In reaching the above conclusion, I have considered the appeal decisions submitted by the appellant to support his appeal. These appeal decisions are distinguishable from the appeal proposal in so far that they relate to different locations and considerations and, importantly, do not focus on existing car parking demand pressures and stress. I have determined this appeal on the evidence that is before me. The submitted appeal decisions do not alter or outweigh my findings or conclusion.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for one additional person to occupy the existing confirmed C4 HMO (i.e., from six residents to seven residents) is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

D Hartley

INSPECTOR