



Appeal Decision

Site visit made on 15 October 2025

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2025

Appeal Ref: APP/L3815/X/24/3352885

53 Adelaide Road, Chichester, West Sussex PO19 7NF

- 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 Simon Birmingham of Simon Property Investments against the decision of Chichester District Council.
 - The application ref CC/24/01345/PLD, dated 12 June 2024, was refused by notice dated 15 August 2024.
 - The application was made under section 192(1)(a) and (b) of the Act.
 - The development for which a certificate of lawful use or development is sought is described as 'Change of use from Class C3 dwelling house to Class C4 house in multiple occupation, to include dormer to rear roof slope'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by the appellant against the Council. That is the subject of a separate decision.

Preliminary Matter

3. The first reason for refusal stated in the Council's decision notice claims that as works on the proposal had commenced at some point before the Council issued its decision, a LDC under section 192 of the Act (for proposed development) could not be granted. It is part of the Council's case that a LDC under section 191 of the Act (for existing development) should have been sought.
4. Section 192 of the Act provides that an application for a LDC may be made by any person who wishes to ascertain whether any proposed use of buildings or other land, or any operations proposed to be carried out, would be lawful if instituted or begun at the time of the application. It is the appellant's case that no works had commenced on or before the date of the application. In any event, as the appellant was seeking confirmation that the proposal would have been lawful on the date of the application, it is of little relevance that works subsequently commenced before the Council determined the application. Had the Council issued a LDC, it would not have confirmed that any works carried out subsequent to the date of the application were lawful. The Council's first reason for refusal is therefore without merit, and I shall proceed to consider whether the proposed development would have been lawful on the date of the application, based on the documents submitted rather than what has since been carried out at the site.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded.

Reasons

6. There is no dispute that on the date of the application, the material change of use of the site from a dwellinghouse falling in the C3 use class (as defined by The Town and Country Planning (Use Classes) Order 1987 (as amended)) to a House in Multiple Occupation (HMO) falling in the C4 use class and the erection of the dormer extension would have both comprised development requiring planning permission. Furthermore, it is not disputed that on the date of the application, the material change of use would have benefited from the planning permission granted by Article 3(1) and Class L of Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development (England) Order 2015 (as amended) (GPDO). I see no reasons to find otherwise, but this does not mean that such development would have been lawful if instituted on the date of the application, with regard to the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), which I shall return to below.
7. It is in dispute whether the dormer extension would have benefitted from the planning permission granted by Article 3(1) and Class B of Part 1, Schedule 2 of the GPDO, with particular regard to its cubic content. Limitation B.1(d)(i) of Class B states that the enlargement of a dwellinghouse consisting of an addition to its roof is not permitted if the cubic content of the resulting roof space would exceed the cubic content of the original roof by more than 40 cubic metres (m³) in the case of a terrace house. The Council claims the proposed plans show the dormer extension would have increased the original roof space by 41.46m³, whereas the appellant claims it would have increased the original roof space by 39.9m³.
8. Neither party has provided detailed evidence to show how the above volumes have been calculated. The Council states scaled measurements were taken from the submitted plans, which were entered into a volume calculator, with accuracy to two decimal places. The appellant states its calculation was made by 'precise architectural software' and that on-site measurements, now that the development has been carried out, confirm they were accurate.
9. In both cases, there are no plans with annotated measurements, including volumes, or breakdowns of the calculations made. The appellant has not clarified why I should regard calculations made by unspecified software as more accurate than the Council's measurements, despite the onus being on them to make out their case to the standard of the balance of probabilities. The appellant's final comments suggest that a fully scaled plan is available at request, but this should have been submitted as part of the application, or at least as part of the appeal statement of case without any parties needing to request it. Moreover, I disagree with the appellant's claim that a three-dimensional drawing with details of measurements 'is not normally deemed to be necessary', as this could help substantiate their case and address ambiguity in the evidence.
10. Overall, the appellant has not provided sufficiently precise and unambiguous evidence to support their claim that the dormer extension shown in the proposed plans would not have exceeded the cubic content of the original roof by more than 40m³. As such, they have not shown, on the balance of probabilities, that the

dormer extension would have complied with limitation B.1(d)(i) of Class B. This does not mean that the proposal did not comply with that limitation, but it has not been shown the proposal would have been compliant.

11. Another two points raised by the Council's officer report are that the site is located within a 12 kilometre (km) zone of influence of the Singleton and Cocking Tunnels Special Area of Conservation¹ (the SAC), and that the site is within an unspecified 'catchment for nitrates'. I have very little information in these regards from either party, but Article 3(1) of the GPDO is clear that the planning permission granted is subject to regulations 75 to 78 of the Habitats Regulations. The Bird Aware Solent Revised Strategy (September 2024) shows the site lies within a 5.6km buffer of the Chichester and Langstone Harbours Special Protection Area (the SPA), which is defined as a 'European site' by the Habitats Regulations. The SAC is also defined as a European site.
12. Regulation 75 of the Habitats Regulations is essentially a pre-commencement condition which applies to every planning permission granted by the GPDO for development which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and is not directly connected with or necessary to the management of the site. This states such development must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77.
13. There is no upper limit to the number of people who may occupy a dwellinghouse falling within the C3 use class. However, the 'existing' plans show the property was a modestly sized two-bedroom mid-terrace house on the date of the application, which would have been unlikely to have been occupied by six or more people. In comparison, the proposed HMO, would have comprised six bedrooms with en-suites and would have likely been occupied by six people forming separate households. While the dwellinghouse could have been extended and occupied by a larger household with no upper limit to the number of occupants, there is little to show there may be more than a theoretical possibility that a single household of six or more people would have occupied it.
14. I therefore find that the proposed change of use would have likely increased the number of people living at the site, which could have required mitigation to address the likely 'in combination' effects outlined in the Bird Aware Solent Revised Strategy. Moreover, I doubt that the site being used as a C3 dwellinghouse would have meant more people living there with access to private motor vehicles, compared to the proposed HMO. I do not therefore find that the proposed change of use would have likely decreased trip generation to the SPA.
15. Taking all matters raised into account, it has not been shown, on the balance of probabilities, that the proposed change of use would not have had a likely significant effect on the SPA. Furthermore, on account of the proximity of the site to the SAC and the opportunities for protected bat species to be present within roof spaces, it has also not been shown on the balance of probabilities that the dormer extension would not have been likely to have had a significant effect on the SAC.
16. The appellant has not therefore provided sufficient evidence to show it is likely that the proposed change of use and the dormer extension could have been instituted

¹ Designated as such for its importance to protected bat species

or begun on the date of the application without needing to satisfy Regulation 77 of the Habitats Regulations, in accordance with the planning permissions granted by Article 3(1) of the GPDO.

17. It is claimed that rooflights and dormer extensions are regularly assessed by Councils without being subject to developer contributions to act as mitigation for any likely significant effects on European sites, and that the majority of lawful C4 HMOs have not been subject to the same demands. It is also claimed that the Council has only referred to Regulations 75 to 78 of the Habitats Regulations following pressure from a Councillor. Be that as it may, Article 3(1) of the GPDO is clear that the planning permissions relied upon by the appellant are subject to those regulations, and a certificate can only be issued under section 192(2) of the Act if information is provided to show a use or operations would be lawful if instituted or begun at the time of the application. The fact that the Council has issued a 'no further action report' in respect of the development carried out does not lead me to any different views on the lawfulness of the development proposed on the date of the application.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed change of use from Class C3 dwelling house to Class C4 house in multiple occupation, to include dormer to rear roof slope, is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

L Douglas

INSPECTOR