



Appeal Decision

Site visit made on 23 July 2026

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2026

Appeal Ref: APP/A1910/X/25/3365341

2 Micklefield Road, Hemel Hempstead, Hertfordshire HP2 4PG

- 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 C Ryder against the decision of Dacorum Borough Council.
 - The application ref 24/02745/LDP, dated 4 December 2024, was refused by notice dated 31 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 a change of use from 6 Person HMO (Class C4) to 7 Person HMO (Sui-Generis).
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Main Issue

1. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue is whether the Council's decision to refuse to grant a LDC is well founded.
2. Having regard to the case made by the parties, the matters to be considered in this case include:
 - The existing use of the appeal property;
 - Whether the change of use would, as a matter of fact and degree, result in a change in the definable character of the use that would amount to a material change of use, having regard to such matters as the effect of the proposal on the Chilterns Beechwoods Special Area of Conservation.
3. The test of the evidence is the balance of probabilities, and the burden of proof is on the appellant.
4. Relevant to certain matters in this case is the advice at paragraph 006 of the Planning Practice Guidance document on Lawful development certificates (PPG). It advises that, 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 probability.

Reasons

Existing use

5. When considering the materiality of the proposed change of use, I must compare the proposed new use with the existing use of the appeal property at the time the LDC application was made. In the appellant's 'Proof of Evidence', prepared prior to the submission of the LDC application, they say that the property is in use as a 6 person house in multiple occupation (HMO). This is a use that falls within Class C4 (Houses in multiple occupation) of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order). The appellant has maintained this position in their appeal submission.
6. The Council suggest that a 6 person HMO is not the existing use of the appeal property. Whilst the Council does not comment on the number of occupiers of the appeal property at the time the LDC application was made, it says that the existing use is as a dwellinghouse. This is a use that falls within Class C3 of Part C of the 1987 Order. In making its case, the Council does not dispute that a change of use of the appeal property from a dwellinghouse to a 6 person HMO would have the benefit of the permission granted by Class L of Part 3, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. Instead, the suggestion is that at the time the LDC application was made, this development (i.e. the change of use from a dwellinghouse to a 6 person HMO) had not occurred. It is for this reason that the Council suggest the existing use of the appeal property is as a dwellinghouse and it is against this use that the Council say that the materiality of the proposed change must be considered.
7. At the time of my visit, the layout of the appeal property as I observed it was consistent with the layout plans submitted with the appeal; the property appeared to be laid out as a typical HMO with 6 bedrooms. I noted a room number and lock on each of the doors annotated as a bedroom on the layout plan. Most bedrooms were occupied and contained items usually found in a HMO bedroom, including a television and personal entertainment devices, as well as some stored food. I acknowledge, however, that my visit is some time after the LDC application was made.
8. In response to the Council's case, the appellant has provided a series of tenancy agreements that relate to the property in an attempt to demonstrate that the existing use is as a 6 person HMO. One is entitled 'addendum to tenancy agreement' and relates to 'Room 5' at the appeal site. This does not appear to be a complete tenancy agreement, not least because it does not include a date.
9. The remaining 5 tenancy agreements relate to the other numbered rooms at the appeal property, and some refer to rights of access to shared areas. They do not appear to relate to the tenancy of the whole property, indicating that these are agreements relating to a HMO, rather than a dwellinghouse.
10. I note that 2 of the agreements are dated prior to the date the LDC application was made, indicating that the tenancy of these rooms commenced prior to the LDC application.
11. The Council has had regard to the tenancy agreements, but maintains that the evidence is not sufficient to demonstrate that the existing use of the appeal

property is not a dwellinghouse. It refers to a lack of evidence, such as Council tax records, licensing information, sworn affidavits and utility bills.

12. Whilst I acknowledge that the onus of proof is on the appellant, the Council does not provide any evidence to contradict what the appellant says. For example, I would expect the Council to have access to Council tax and licencing information, and to provide it in this appeal, if relevant. This might assist in demonstrating whether or not the appellant's claims are correct. Whilst this evidence is not before me, the absence of it is not sufficient to contradict what is claimed by the appellant. Furthermore, the Council has not indicated that the appeal site was visited in the process of considering the LDC application, such that the Council Officer had observed the appeal property in use as a dwellinghouse, rather than as a HMO.
13. I have had regard to the Southsea appeal decisions¹, which the Council refers to on this particular matter. In respect of certain of the appeals in that case, the Inspector concluded that the appellant had failed to demonstrate that the former use of the properties in question was as a 6 person HMO. However, in that case the appellant was not the owner of the site at the time the suggested 6 person HMO use was taking place and did not, therefore, have first-hand knowledge of how the property was used. As such, the suggestion in that case was that previously, the property **could have been** used as a 6 person HMO, not that **it was** used in this way. That is not the case in the appeal before me, where the evidence indicates that the appellant was the owner of the property at the time the LDC application was made and so would have first-hand knowledge of how the property was used at that time (i.e. the nature and scale of its occupation).
14. There also appears to have been evidence in the Southsea appeal decisions regarding works to facilitate the alleged material change of use of the properties in question to a 7 person HMO use. The Inspector says that this demonstrates that the properties were more likely than not to have been formerly occupied as family homes, rather than a 6 person HMO. I do not have such contradictory evidence in the case before me.
15. I acknowledge that the appellant's evidence to corroborate what they say is limited. Nevertheless, this evidence does corroborate what is claimed. I do not find the appellant's evidence unclear or ambiguous and there is nothing to persuade me that the appellant's version of events is less than probable. For this reason, I conclude that it is more likely than not that at the time the LDC application was made, the appeal property was used as a HMO for 6 persons. That an LDC has not been obtained for this existing use of the appeal property does not change my conclusion. It is against this use that I consider the materiality of the proposed change.

Proposed use

16. Having regard to my conclusions above, the proposed use would not result in a change to the nature of the use of the appeal property, rather a change to its scale. What must, therefore, be determined is whether the proposed increase in the scale of the use would reach the point where it would give rise to such materially different planning circumstances that, as a matter of fact and degree, it would result in a

¹ Appeal Decisions APP/Z1775/C/20/3245106, APP/Z1775/C/20/3246078, APP/Z1775/C/20/3245110, APP/Z1775/C/20/3246079, APP/Z1775/C/20/3245108, APP/Z1775/C/20/3246077, APP/Z1775/C/19/3233187, APP/Z1775/C/19/3236610, APP/Z1775/C/19/3234941, APP/Z1775/C/19/3266831, APP/Z1775/C/19/3238003, APP/Z1775/C/19/3238287

change in the definable character of the use that it would amount to a material change of use. I have had regard to the caselaw² that has been drawn to my attention, as well as the numerous appeal decisions. These confirm that the assessment is a matter of fact and degree.

17. The appeal property is a three storey building. As I note above, the layout was consistent with the layout plans submitted with the appeal, in particular the rooms annotated as bedrooms and the ground floor arrangement. The appellant says that the proposed use would not result in any physical changes to the appeal property. Rather, the additional occupier would be accommodated within one of the existing rooms, meaning that one of the 6 bedrooms I observed would accommodate two residents.
18. A HMO is a property occupied by a number of residents who are usually unrelated. Whilst certain facilities will be shared, residents would not live together as a single household; there would be several households within a HMO. Whilst what is proposed in this case would mean that there would be an additional resident within the property, it is highly likely given the circumstances that two of the residents would form a single household. By this I mean that the additional resident would share their private living space and private facilities with an existing resident. These residents would also be likely to use the communal living space and facilities together.
19. Comings and goings to the property might increase, but it is likely that the two person household would take certain trips to and from the property together, particularly for shopping or leisure. If the additional resident were to have a vehicle, this is also likely to be shared with the other resident in their household, as is common place in a typical household. There is nothing to indicate that the additional occupier would result in an increased demand for on-street parking, even if there is a high demand for parking in the area.
20. I note reference in the appeal decision APP/Z1775/C/23/3327364 to the potential for an increase in food deliveries and online purchase deliveries with an additional resident. The Inspector in that case says that since the Covid-19 pandemic the same could be said for all sorts of households and, as such, did not accept that an additional occupier would lead to a noticeable change in deliveries leading to a noticeable change in the character of the area. Although the property in question in that case was in a different location, I have no reason to reach an alternative conclusion in this appeal. Indeed, I would say that activity associated with deliveries is likely to be less in the case before me, as the additional resident would join an existing household within the appeal property, rather than increase the number of households on the site.
21. A two person household might well result in the production of more waste when compared to a single person household. Nevertheless, I observed a dedicated external bin storage area along the side of the property, as well as a spacious garden with a side entrance. There is no suggestion that waste storage at the property is already a particular problem, such that any increase in waste storage would be notable.

² In particular, *R (Lyons) v Secretary of State for Communities and Local Government* (2010), *Childs v First Secretary of State and Test Valley Borough Council* (2005) and *Reed v Secretary of State for Communities and Local Government & Anor* (2014)

22. I turn to the Council's second reason for refusal of the LDC application. The officer's report refers to the effect of the proposal on the Chilterns Beechwoods Special Area of Conservation (CBSAC). However, the report refers to the LDC application as a 'planning application'. In particular, it says that there is a lack of an 'alternative solutions/mitigation or credible imperative reasons of overriding public interest [to indicate] why the application should be permitted'. Whether or not there is sufficient evidence to conclude that planning permission should be granted for what is proposed is a matter that does not fall to be considered within the remit of an LDC application or appeal.
23. That said, the effect of the proposed use on the CBSAC would be relevant to the planning circumstances that result from the proposal. Furthermore, the proposed use might not be found lawful if the evidence demonstrated that it is likely to have a significant effect on the CBSAC, such that the duties under The Conservation of Habitats and Species Regulations 2017 and The Conservation of Habitats and Species (EU exit amendment) Regulations 2019 are engaged.
24. The Council point only to an increase in recreational pressures on the CBSAC and say that the appellant has not demonstrated that such pressures would not adversely affect the integrity of the CBSAC. It does not, however, expand on this point to indicate what the extent of those suggested additional pressures might be and how they compare to the existing use of the property. Indeed, the Council does not say that the suggested increase in recreational pressures that results from the proposal is likely to adversely affect the integrity of the CBSAC. This is not a matter that either party has sufficiently addressed in evidence. Nevertheless, I must determine the appeal on the basis of what is before me.
25. I have found that the addition of a seventh resident in the appeal property is highly unlikely to result in the formation of an additional household. Consequently, and as considered above, comings and goings to the property for leisure activities, including visits to the CBSAC, are not likely to increase to the same degree as would be the case, were the additional resident to form an additional household in the appeal property. Accordingly, when compared to the existing use, I am unable to conclude that any increase in pressure on the CBSAC is likely to be anything more than marginal.
26. Neither party has provided substantive evidence regarding the extent of any increase in recreational pressure, how it would arise, or its likely effects on the CBSAC. Nevertheless, on the basis of the evidence before me, I am not persuaded that the proposal would give rise to effects on the CBSAC sufficient to demonstrate materially different planning circumstances from those associated with the existing use. Neither does the evidence demonstrate that the proposal is likely to have significant effects on the CBSAC, such as to engage the habitats assessment process.
27. Having regard to the evidence before me and the particular circumstances of this case, I conclude that, as a matter of fact and degree, the proposed use of the appeal property would not result in a material change of use for which planning permission would be required. Accordingly, I am satisfied that the proposed use would have been lawful if it had been instituted or begun at the time the LDC application was made.

28. As I note above, my conclusion is based on the particular circumstances of this case, which includes that the additional resident would be accommodated within one of the 6 existing bedrooms within the appeal property. As such, I intend to specify this within the certificate to be granted, in the description of the use I find lawful. This approach is in accordance with the advice at paragraph 010 of the PPG, which advises that 'precision in the terms of any certificate is vital, so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it'. It goes on to say that 'in all cases, the description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision'.
29. The certificate I intend to grant in this case would not apply to a use that is materially different from the proposed use. That might include where 7 residents of the HMO would be accommodated within the property in an alternative manner to that proposed.

Conclusion

30. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for a change of use from a 6 Person HMO (Class C4) to a 7 Person HMO (Sui-Generis) is 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.

Formal Decision

31. 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.

J Moss

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 4 December 2024 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 and identified as 'Plan 1', would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Having regard to the evidence and the particular circumstances of this case, the proposed use of the appeal property would not, as a matter of fact and degree, result in a material change of use for which planning permission would be required. Accordingly, the proposed use would have been lawful if it had been instituted or begun at the time the LDC application was made.

Signed

J Moss

Inspector

Date: 01 October 2026

Reference: APP/A1910/X/25/3365341

First Schedule

The change of use from a 6 person HMO (a use falling within Class C4 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended) to a use as a 7 person HMO (a sui-generis use) where those 7 residents are accommodated within the property laid out as shown on the layout plans attached to this certificate and labelled 'Plan 2', 'Plan 3' and 'Plan 4', which include only 6 bedrooms within the property.

Second Schedule

Land at 2 Micklefield Road, Hemel Hempstead, Hertfordshire HP2 4PG

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 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 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.

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.



Plans

This is the plan referred to in the Lawful Development Certificate dated: 01 October 2026

by J Moss BSc (Hons) DipTP MRTPI

Land at: 2 Micklefield Road, Hemel Hempstead, Hertfordshire HP2 4PG

Reference: APP/A1910/X/25/3365341

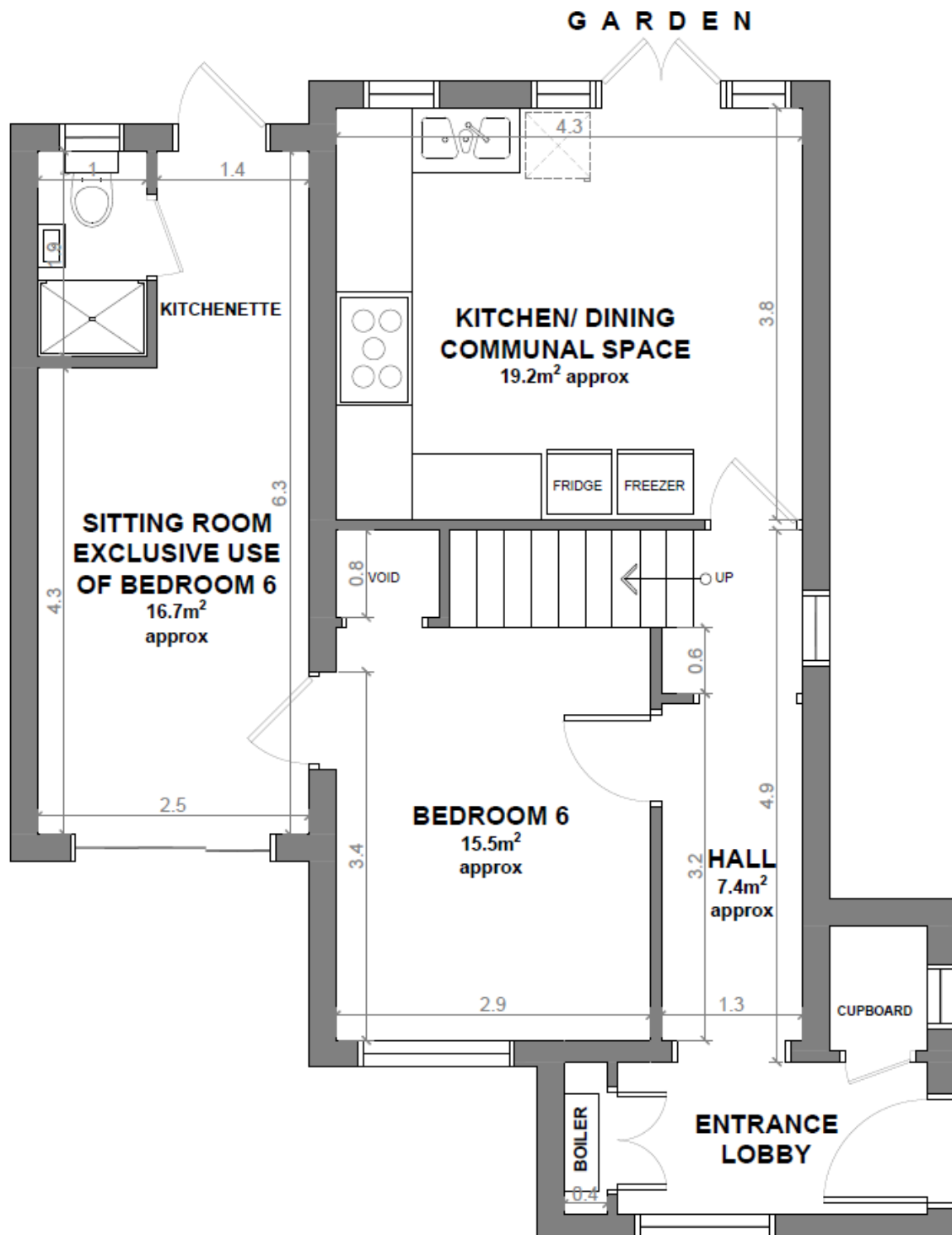
Scale: Not to scale

Plan 1:



Plan 2:

2 MICKLEFIELD ROAD, HEMEL HEMPSTEAD



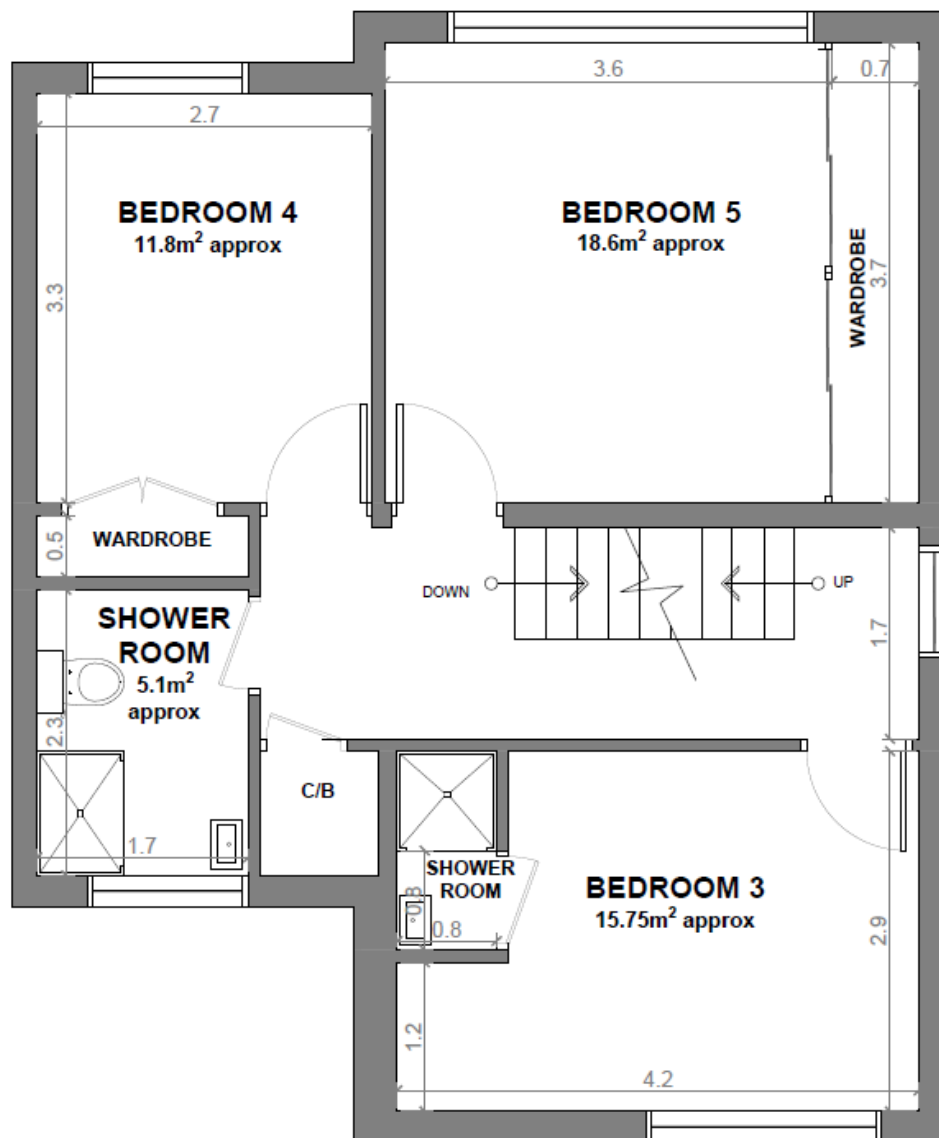
GROUND FLOOR PLAN

SCALE

1:50MTS.

Plan 3:

2 MICKLEFIELD ROAD, HEMEL HEMPSTEAD



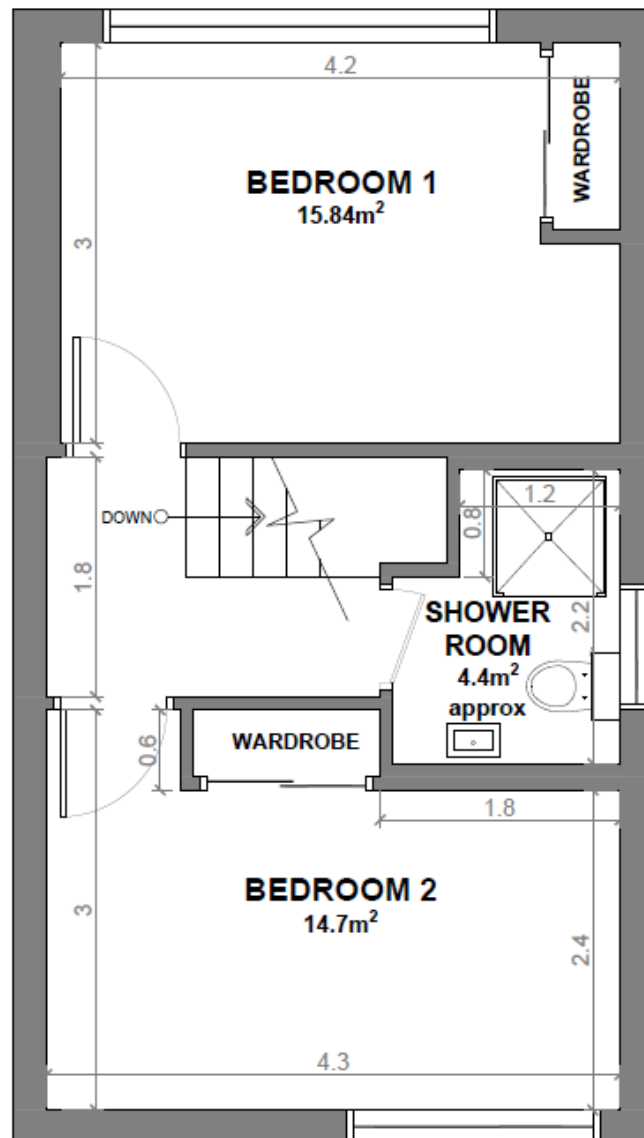
FIRST FLOOR PLAN

SCALE

1:50MTS.

Plan 4:

2 MICKLEFIELD ROAD, HEMEL HEMPSTEAD



SECOND FLOOR PLAN