

WELWYN HATFIELD BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT
DELEGATED REPORT

APPLICATION No: S6/2014/0991/LUE

SITE ADDRESS: 53 Parkhouse Court, Hatfield

DESCRIPTION OF DEVELOPMENT: Certificate of lawfulness for change of use from residential (C3) to House in Multiple Occupation (C4)

RECOMMENDATION: APPROVAL

1. SITE AND APPLICATION DESCRIPTION: The application site is situated in a block of flats within Parkhouse Court. The flat is on the second floor and overlooks Tamblin Way. The flat was designed to be a two bedroom flat however the living room has been converted into a third bedroom.

2. SITE DESIGNATION: The site lies within Hatfield as designated in the Welwyn Hatfield District Plan 2005.

3. RELEVANT PLANNING HISTORY: None

4. CONSULTATIONS:

WHBC Client Services – No objection (17/06/2014)

WHBC Planning Policy – No objection (20/06/2014)

Fire Services – No objection (04/07/2014)

5. NEIGHBOUR REPRESENTATIONS: Three consultations were received that objected to the certificate of lawfulness application. They can be summarised as follows:

- The unit is subject to a lease that contains covenants and restrictions and therefore it shouldn't be used as a House in Multiple Occupation
- Not enough parking for residents at present
- Lack of communal living space
- Increase in noise levels
- Increased fire risk
- Communal bins already at capacity

The above concerns cannot be taken into account when assessing this application as it is not a planning application and no evidence was provided to indicate that the flat has not been operating as a House in Multiple Occupation since January 2012.

A letter was received from the management company of the unit who advised that there is a clause within the estate lease that restricts the use of the unit as a House in Multiple Occupation. The management company has therefore decided that the use of the unit as a house in multiple occupation would be against the terms of the lease and have refused to grant permission. This is not a Planning matter and therefore does not influence the outcome of this application as it is a matter for the applicant and the management company to resolve.

6. TOWN/PARISH COUNCIL REPRESENTATIONS: Not applicable

7. DISCUSSION:

The relevant period for immunity from enforcement.

An Article 4 Direction came into force on 12 January 2012 which removed permitted development rights for private dwellinghouses (C3 Use) to change to Houses in Multiple Occupation (C4 Use) without the need of planning permission.

Any dwellinghouses in C4 Use before this date could remain as C4 Use as long as they continued to be remain in this HMO use, and did not revert back to C3 Use (which is still permitted development for dwellinghouses in Hatfield).

The key issues in this application is therefore whether the applicant can demonstrate sufficient evidence to show that the subject dwelling has operated continuously as an HMO (C4 Use) from 12 January 2012.

Evidence submitted with application S6/2014/0991/LUE

The applicant has submitted two short hold tenancy agreements both for a fixed term of 12 months. One tenancy agreement is for 4 individuals and the other is for 3 individuals.

The dates of the tenancy agreements are as follows:

08/07/2011 – 08/07/2012 – (Mr Bai Yinshan, Miss Ma Xiaorui, Mr Li Meng and Mr Yifang Zhang)

08/07/2012 – 08/07/2013 (Miss Chia –Yi Lin, Miss Huijun and Miss Hanqi Yang)

Although the submitted tenancy agreements were not signed, dated or witnessed a statutory declaration witnessed by a solicitor has been submitted as evidence. The statutory declaration confirmed that since 9th July 2013 the flat had been continuously let out to unconnected persons until 5th March 2014. The acting agent has confirmed that three unrelated students have occupied the flat since that date.

Appraisal of the evidence of use

Class C4 of the (Town and Country Planning (Use Classes) Order 1987 (as amended) is defined as “Use of a dwellinghouse by not more than 6 residents as a “house in multiple occupation” ”.

Class C4, therefore, relates to shared houses or flats occupied by between three and six unrelated individuals who share at least one basic amenity (such as a kitchen and bathroom). A property containing the owner and up to two lodgers does not constitute a house in multiple occupation. To classify as a house in multiple occupation a property does not need to be converted or adapted in any way (Circular 08/2010).

The full definition of a family is contained within section 258 of the Housing Act 2004. To be of the same family, the occupants must be married to each other, live together as husband and wife, live together in a same sex relationship, or be related to each

other, such as a parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin.

The Housing Act 2004 Chapter 34, Part 7 (Supplementary and Final Provisions) "Meaning of House in Multiple Occupation" S.253 (2) (f) states:

'two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities'.

Within the application property the occupants share the kitchen and bathroom. It should be noted that the living room has been converted into a third bedroom. The surnames of the occupants suggest that they are unrelated.

In terms of the principle requirements, the Housing Act states that two people who form two households are excluded from being an HMO therefore it would be excluded from the C4 use class definition and be Sui Generis use. Accordingly there would need to be between three and six occupants who formed two or more households for a C4 use to exist.

Two tenancy agreements were submitted that covers the period July 2011 to July 2013 along with a statutory declaration therefore there is sufficient evidence to prove that the property has been operating as an HMO since the Article 4 Direction was introduced in January 2012.

8. CONCLUSION:

That there is evidence that the site has been used for a purpose within Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) on and since 12th January 2012.

9. RECOMMENDATION: APPROVED

The area and building outlined in red on the site location plan received and dated 23 May 2014 has been used as a house in multiple occupation as defined by Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) on and since 12 January 2012.

First Schedule: Certificate of lawfulness for change of use from residential (C3) to House in Multiple Occupation (C4)

Second Schedule: 53 Parkhouse Court, Hatfield.

APPROVED DRAWING NUMBERS: 1:1250 Site Location Plan received and dated 23 May 2014.

Signature of author..... **Date**.....