

**WELWYN HATFIELD BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT
DELEGATED REPORT**

APPLICATION No: S6/2014/1576/LUE

SITE ADDRESS: 122 Mosquito Way, Hatfield

DESCRIPTION OF DEVELOPMENT: Certificate of lawfulness for existing use as House in Multiple Occupation (C4)

RECOMMENDATION: APPROVED

1. SITE AND APPLICATION DESCRIPTION: The application site comprises of a mid terrace townhouse with a front and rear garden.

The application is for a certificate of lawfulness for use as a house in multiple occupation (C4).

2. SITE DESIGNATION: The site lies within the De Havilland Landscape Character Area as designated in the Welwyn Hatfield District Plan 2005.

3. RELEVANT PLANNING HISTORY: None

4. CONSULTATIONS: None

5. NEIGHBOUR REPRESENTATIONS: None

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 up to the date of the application (18 July 2014).

Evidence submitted with application S6/2014/1576/LUE

The applicant has submitted short hold tenancy agreements that cover the period 12/02/2009 through to 10/10/2014 all for various timescales, the shortest being 1

month and the longest being 13 months. The number of tenants varied between three and six tenants at any one point. Each tenancy agreement was signed and dated by both the applicant and the tenant.

The following tenants stayed in the property during the following years:

2009:

12/02/2009 – 26/09/2010 (Kittiphat Hongchuvech, Keith Odima, Alanazi Ahmed Sulaimans and Al Romaiti Ahmed Abdul Rahman Abdulla Humaid)

2010:

Rashed Ahmed Rashed Al Hedar Aldaheri, Al Anazi Ahmed Sulaimans, Mohammed Hamoud Ali Al Zahrani and Alsolami Uthman Jobbel)

2011:

Thilini Maheshika Mahara Hettiarachchige, Rimantas Dabasauskas, Fayhan S.K. Alkahtani, Said K.S.S. Almairooei, Victor Taino Sity and Richardson Mawejje

2012:

Mbonu George, Ann Waithera Ndungu, Fatih Toklu and Abdullah Toklu

2013/2014:

Adibalakumo Kiakubu, Karol Powel Plaszwski, Daniel Epowade Oyadonghan, Michael Akpan, Ruhu Alom Chad, Fazal Haidar Fazal, Carmelo Di Bella and Ms Chaiara Spina

Council Tax evidence:

Council tax documents have been submitted that covers the period 2007 to 2014 in support of the application.

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 living room/kitchen, downstairs WC and bathroom. It should be noted that when the property is under occupied that bedroom 3 can be used as a study/living room. One bedroom benefits from having an ensuite. The surnames of the occupants suggest that they are unrelated apart from Mr Fatih Toklu (date of birth 10/04/1989) and Mr Abdullah Toklu (26/06/1990).

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.

The number of tenants between 2010 and the date the planning application was submitted were as follows:

2009: 4 tenants
2010: 4 tenants
2011: 6 tenants
2012: 4 tenants
2013: 7 tenants (not all in the property at one time)
2014: 4 tenants (as highlighted on 2013 list of tenants)

Tenancy agreements were submitted with the application that covers the period February 2009 to October 2014 therefore there is evidence to indicate that the property has been operating as an HMO since the Article 4 Direction was introduced in January 2012. There has been a high turnover of tenants that have lived in the property since 2009 however based on the submitted tenancy agreements, at no time did the number of tenants exceed 6 tenants.

Council tax records support the fact that the property has been used as an HMO since January 2012 and records have been submitted since April 2010 that indicates that the property has been occupied by students. The crucial Council tax document is the notice that covers 1 September 2011 to 31 March 2012 as this indicates that the property was operating as an HMO prior to January 2012.

Therefore there is sufficient evidence to show that the application property has been used continuously within Class C4 since the Article 4 Direction came into force on 12 January 2012.

8. CONCLUSION:

The decision is based on the evidence available and the balance of probabilities. The evidence to show that the application property has been used continuously as an HMO since the Article 4 Direction came into force on 12 January 2012 is considered to be sufficient to meet the test of "on the balance of probability". It is therefore recommended that a Certificate of Lawfulness be APPROVED for this development.

9. RECOMMENDATION: APPROVED

The area and building outlined in red on the site location plan received and dated 18 July 2014 has been used continuously 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 existing use as House in Multiple Occupation (C4)

Second Schedule: 122 Mosquito Way, Hatfield.

APPROVED DRAWING NUMBERS: 1:1250 Site Location Plan received and dated 18 July 2014.

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