

**WELWYN HATFIELD BOROUGH COUNCIL  
EXECUTIVE DIRECTOR - PLANNING, PUBLIC PROTECTION AND GOVERNANCE**

**DELEGATED APPLICATION**

**Application No:** 6/2020/0326/LAWE  
**Location:** 5 Chipmunk Chase Hatfield AL10 9GH  
**Proposal:** Certificate of lawfulness for the existing use of a HMO  
**Officer:** Ms Lucy Hale

**Recommendation:** Granted

6/2020/0326/LAWE

<b>Context</b>	
Application Description	Certificate of lawfulness for the existing use of a HMO (C4 use).
Relevant Planning History	Application Number: 6/2020/0324/LAWE Decision: Granted Decision Date: 27 March 2020 Proposal: Certificate of lawfulness is sought for the conversion of a garage to a habitable room in breach of a parking condition
<p><b>The main issues are:</b></p> <p><b>Whether the applicant can demonstrate sufficient evidence to show that the subject dwelling has operated continuously as a small HMO (C4 use) since before 2012 and is lawful.</b></p>	
<b>Discussion</b>	
<p>Whilst the change of use from a C3 (dwellinghouse) to C4 (HMO) is normally a permitted change of use in terms of the GPDO, an Article 4 Direction covers the whole of Hatfield and means that planning permission is now required when owners intend to turn a dwellinghouse into a HMO for three to six occupants. The Direction does not affect such HMOs in existence prior to 12 January 2012.</p> <p>A certificate is sought on the basis that this property has been occupied as C4 HMO prior to 12 January 2012.</p> <p>The onus of proof in a lawful development certificate application is firmly on the applicant and the Courts have held that the relevant test of the evidence on such matters is, "the balance of probability". Moreover, the Court has held (see F.W. Gabbittas v SSE and Newham LBC [1985] J.P.L. 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the local planning authority has no evidence itself, nor from any others, to contradict or otherwise make the applicants 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". The Planning Practice Guidance reiterates that this is the approach to be taken by local planning authorities when determining certificate of lawfulness applications.</p>	

Evidence submitted:

- Tenancy Agreement dated 2009 – 2020
- Bank Statements 2013 - 2020

The tenancy agreements date from 2009 until present and all agreements obtain 3 unrelated persons. Only a number of the tenancy agreements have been signed which include those commencing on September 2012, September 2013 and September 2018. In addition to the agreements, bank statements have been provided to confirm the names of the tenants linked to each of the tenancy agreements dating from 2013 until present. Whilst no statements have been submitted for 2012, the application is supported by a signed tenancy agreement. There is also a gap in bank statement records in 2018 and a signed tenancy agreement has been submitted to cover this year.

All of the tenancy agreements are 11/12 month contracts and student exemption has been applied for Council Tax purposes. The bank statements reflect for a number of the years, rent was only paid up until the end of student term times before the contract finished resulting in the property being vacant over the summer months until September. This is not considered to be an unusual arrangement for university accommodation and the amount of time the property was left vacant each year is considered to be reasonable.

The evidence available confirms that the property has been rented out as a C4 HMO since 2009 and before the Article 4 Direction came into force in January 2012. The Council is not presently in possession of any contradictory evidence to the above. As a consequence, it is considered reasonable and appropriate to recommend that this certificate of lawfulness application is granted.

**Conclusion**

The decision is based on the evidence available and on the balance of probabilities. The evidence available is considered sufficient to support the grant of a certificate. The Council is not presently in possession of any contradictory evidence to the above; therefore, on the balance of probability, the application building would appear to have been used as a C4 HMO prior to 12 January 2012. On this basis, a Certificate of Lawfulness is approved.

**Conditions:**

1. The submitted evidence is considered sufficient to support the grant of a certificate. The Council is not presently in possession of any contradictory evidence to the above. Therefore, on the balance of probability, the application building would appear to have been used as a C4 HMO prior to 12 January 2012. On this basis, a Certificate of Lawfulness is approved.

**DRAWING NUMBERS**

2. The development/works shall not be started and completed other than in accordance with the approved plans and details:

<b>Plan</b>	<b>Revision</b>	<b>Details</b>	<b>Received Date</b>
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<b>Number</b>	<b>Number</b>		
P001		Location and Block Plans	5 February 2020
P010		Existing Ground Floor Plan	6 April 2020
P011		Existing First Floor Plan	6 April 2020

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

**Determined By:**

Mr Jonathan Murray  
29 May 2020