

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

DELEGATED APPLICATION

Application No: 6/2020/0756/LAWE
Location: 22 Fillingham Way Hatfield AL10 9GE
Proposal: Certificate of lawfulness for existing use as a HMO (C4)
Officer: Ms Lucy Hale

Recommendation: Granted

6/2020/0756/LAWE

Context	
Application Description	Certificate of lawfulness for existing use as a HMO (C4).
Relevant Planning History	<u>Enforcement</u> Application Number: ENF/2020/0004 Decision: Decision Date: Proposal: Change of use to a C4 HMO
The main issues are:	
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.	
Discussion	
<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 HMO's 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. Gabbitas 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:

- Signed Tenancy Agreement dated 2009 - 2020
- Email correspondence with Private Sector Housing

The tenancy agreements dating from 2009 until present are all signed by 5 unrelated persons and the tenancies are either 11 or 12 month contracts. In addition, to these agreements, the Private Sector Housing team have confirmed that the property has been licensed as a 5 bedroom HMO from 2013 and previous to that in late 2011 a complaint relating to students in the property is on their records. Further to the evidence submitted by the applicant, the Council Tax team have outlined that their records confirm that since the current owner purchased the property, they have applied for council tax exemption for 5 students occupying the property each year since 2009.

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. 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:

Plan Number	Revision Number	Details	Received Date
Location Plan		Location Plan	23 March 2020
Floor Plans		Floor Plans	30 March 2020

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

Determined By:

Mr Jonathan Murray
18 May 2020