

**WELWYN HATFIELD BOROUGH COUNCIL
ASSISTANT DIRECTOR (PLANNING)**

DELEGATED APPLICATION

Application No: 6/2023/0247/LAWE
Location: 104 Dragon Road Hatfield AL10 9NX
Proposal: Certificate of lawfulness for the existing use of HMO
Officer: Ms Elizabeth Mugova

Recommendation: Granted

6/2023/0247/LAWE

Context	
Application Description	Certificate of lawfulness for the existing use of HMO.
Relevant Planning History	None
<p>The main issues are:</p> <p>Whether the applicant can demonstrate sufficient evidence to show that the subject dwelling has operated continuously as a House of Multiple Occupancy for at least a 10-year period.</p>	
Discussion	
<p>The application has been made under section 191(1)(b) of the principal Act. The following general points should be noted:-</p> <ul style="list-style-type: none"> • Section 191(4) states that the local planning authority shall be provided with such information as required to satisfy it as to the lawfulness at the time of the application, of the matters described in the application. • The onus of proof lies with the applicant and the relevant test is the balance of probabilities. • The evidence must be sufficiently precise and unambiguous to justify the grant of a certificate. • There is no need for independent corroboration of an applicant's evidence. If the local planning authority has no evidence of its own, or from third parties, to contradict or otherwise undermine the applicant's version of events then there is no good reason to refuse an application. <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 an HMO. 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 a C4 HMO prior to 12 January 2012 and since 2007.</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 of their own, or 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”.

The key consideration for this application is whether the applicant has proved, on the balance of probabilities, that use of the property at No.104 Dragon Road, as outlined in red on the submitted location plan, has been used as a small HMO for in excess of ten years and has therefore become lawful under the terms of Section 171B of the Town and Country Planning Act 1990 (as amended).

Evidence submitted:

The applicant contends that the property has always been rented to 3 students not related to each other since 2007 as a House in Multiple Occupation.

- Tenants record with details of three tenants per academic calendar. The timeline on the tenant record is as follows:
 - Start date 10/09/2008; end date 31/08/2009.
 - Start date 07/09/2009; end date 06/09/2010.
 - Start date 07/09/2010; end date 31/08/2011.
 - Start date 09/09/2011; end date 31/08/2012.
 - Start date 10/09/2012; end date 31/08/2014.
 - Start date 26/09/2014; end date 31/08/2015.
 - Start date 21/09/2015; end date 31/08/2016.
 - Start date 16/09/2016; end date 21/08/2017.
 - Start date 04/09/2017; end date 27/08/2018.
 - Start date 14/09/2018; end date 19/08/2019.
 - Start date 09/09/2019; end date 08/07/2020.
 - Start date 03/09/2020 end date 02/08/2022.
 - Start date 31/08/2008; end date 30/07/2023.
- Lease document which was signed on the 19th February 2008 between the Landlord (Bovis Homes Limited), the Tenant (Anthony Fitzgerald of Keldun House, Tarbet Co. Kerry) and Other parties (The Crescent (Hatfield)Management Company Limited).

Appraisal of the evidence of use:

The breach of planning control must continue throughout a 10-year period before it can achieve immunity from enforcement action, although some minor interruption will not normally be fatal, provided it is not significant. A short suspension will not usually stop the period running, but it is a matter of fact and degree in each case whether an interruption in activity on the ground has resulted in the cessation of the breach. In this case, the Tenants record supplied by the applicant sufficiently evidences that, on the balance of probabilities, the property at No.104 Dragon Road, as outlined in red on the submitted location plan, has been used as a small HMO for in excess of ten years.

Overall, the evidence submitted confirms that the property has been rented out as a C4 HMO since 2008, 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 shows that the property at No.104 Dragon Road has been used as a small HMO for in excess of ten years and 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 granted.

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 and has continued up to the date of this application. 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
5-118	A	Block Plan	1 February 2023
TQRQM2303 4093403579		Site Location Plan	3 February 2023

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

Determined By:

Mr Mark Peacock
30 March 2023