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# Appeal Decision

by **D Fleming BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

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**Appeal Ref: APP/Z1775/C/23/3327364**

**127 Powerscourt Road, Portsmouth PO2 7JQ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr J Verncombe against the decision of Portsmouth City Council.
  - The application Ref 21/01417/CPL, dated 21 September 2021, was refused by notice dated 3 August 2023.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is applied for is described as change of use from 6 Person HMO (Class C4) to 7 Person HMO (*sui generis*).
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## Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use, which is found to be lawful.

## Application for Costs

2. An application for costs has been made by the appellant against the Council. This application will be the subject of a separate Decision.

## Procedural Matter

3. No site visit has been carried out as the appeal can be decided purely on the basis of the technical and/or legal interpretation of the facts. All the information needed is included with the application and appeal documents and so a decision can be reached on the papers.<sup>1</sup> There are no objections from the parties to proceeding in this way.

## Main Issue

4. The main issue is whether the Council's decision was well-founded.

## Reasons

5. The appeal site comprises a mid-terraced, three storey property laid out as follows:

Ground floor: lounge, bedroom, kitchen;

First floor: two bedrooms, a shower room and a bathroom; and

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<sup>1</sup> Certificate of lawful use or development appeals- procedural guide, updated 26 July 2023, states at paragraph 7.2.11.5. "A site visit won't be needed for every appeal. It is for the Inspector to decide whether to conduct one."

Second floor: three bedrooms.

6. It is currently used as a six person house in multiple occupation (HMO, Use Class C4) following a grant of planning permission in 2014.<sup>2</sup> The appellant proposes to increase the number of occupiers to 7 by making use of the lounge as a bedroom. He submits that the character of the building would remain as a HMO. There would be no detectable intensification of the building that would result in a material change of use and, as such, the proposal would not result in development as set out within section 55(1) of the Town and Country Planning Act 1990 (the 1990 Act as amended). The addition of a bedroom and one person to the building would not result in a material change of use by fact or degree.
7. It has been held in case law that a change of use can only be material by bringing about a definable change in the character of the main use of the land. In other words, there needs to be some significant difference in the character of the activities from what has gone on previously. Environmental impacts might evidence such a change in character but they are not the cause of the change.
8. The character of the area around the appeal site is residential comprising Victorian terraced housing. It is likely given the proximity of the site to the city centre that some of the housing stock will have been converted to flats and some will be in use as HMOs. However, neither party has provided specific details on the use of neighbouring properties.
9. I find the development would result in an increase in the intensity of the use but that would not automatically lead to a noticeable change in the character of the use. This would remain residential and the appeal site is one of several three storey properties in the road. These are likely to be occupied by either large families, be subdivided into flats or be used as HMOs and therefore the change in the comings and goings from the appeal site from an additional occupier would go unnoticed in my view.
10. An additional occupier would lead to the production of more waste but I note the appeal property has a spacious front garden sufficient to accommodate extra refuse bins if needed. The Council provided no details about sewerage and I have therefore not been able to take this concern into account.
11. In addition, no evidence has been put forward by the Council that an additional occupier would result in a demand for on-street parking or indeed that there is parking stress in the area. It is often submitted that a HMO use results in an increase in food deliveries and online purchase deliveries but since the Covid-19 pandemic the same could be said for all sorts of households. As such, it is not accepted that an additional occupier would lead to a noticeable change in deliveries leading to a noticeable change in the character of the area.
12. The Council are also concerned about the layout of the property but it seems to me that the provision of shared bathrooms in a HMO is common and the level of facilities at the appeal site is generous. Two bedrooms have en suites and the remaining occupiers would share three toilets, a shower and a bath. In addition, the kitchen is large enough to accommodate a lounge area.

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<sup>2</sup> Ref: 14/00146/FUL

13. The appellant relies on several previous appeal decisions to support his case. The Campbell Properties appeal decisions<sup>3</sup> were made in response to the issue of various enforcement notices and the appeals made under ground (c). None of the evidence put to the inspector specifically demonstrated that additional occupiers at particular addresses in Portsmouth resulted in a material change of use but that is not to say that could be the case in other locations.
14. Another decision<sup>4</sup> in Portsmouth dealt with three sites. All the appeals were in respect of applications for planning permission seeking to introduce an additional occupier at each site, from 6 to 7 which had already occurred by the time of the Inspector's site visit. The Inspector adopted the same reasoning as the Inspector in the Campbell Properties decision.
15. Finally, an Inspector determining an appeal against a refusal of planning permission for an additional occupier in a Class C4 HMO allowed the appeal. This was on the basis that the additional occupier would share a double bedroom and the property had the benefit of a separate lounge. As such, I do not find this decision to be directly comparable with the appeal before me. None of these appeal decisions direct my own conclusions. I take them into account but they rely on their own particular circumstances and the evidence before the Inspectors.

### **Conclusion**

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the change of use from a 6 Person HMO (Class C4) to 7 Person HMO (*sui generis*) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*D Fleming*

INSPECTOR

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<sup>3</sup> Ref: APP/Z1775/C/20/3245106 et al

<sup>4</sup> Ref: APP/Z1775/W/22/3302601 et al



## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(As amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on date of application the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use would not amount to a material change of use of the property. It would not therefore fall within the meaning of development set out in section 55(1) of the Town and Country Planning Act 1990, as amended, and no planning permission is required.

Signed

D Fleming  
Inspector

Date 22 January 2024

Reference: APP/Z1775/X/23/3327364

### ***First Schedule***

Change of use from 6 Person HMO (Class C4) to 7 Person HMO (*sui generis*)

### ***Second Schedule***

Land at 127 Powerscourt Road, Portsmouth PO2 7JQ

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



## Plan

This is the plan referred to in the Lawful Development Certificate dated: 22 January 2024

by **D Fleming BA (Hons) MRTPI**

**Land at: 127 Powerscourt Road, Portsmouth PO2 7JQ**

**Reference: APP/Z1775/X/23/3327364**

Scale: not to scale

