

Development Control
City Development & Regeneration
Brighton & Hove City Council
Hove Town Hall
Norton Road
BN3 3BQ

06 August 2021

Dear Sirs

SITE AT 155 QUEENS PARK ROAD, BRIGHTON, BN2 0GH

This letter is submitted in respect of an application for a Certificate of Lawfulness for an Existing Development. The site is 155 Queens Park Road, and the works carried out were “subdivision of a bedroom to create a 6th bedroom in a Class C4 Small House in Multiple Occupation”.

The development is lawful as it did not result in any change of use outside of the C4 Use Class. Consequently the works did not amount to development requiring planning permission.

In addition to this letter, the application comprises:

- Application forms,
- CIL forms
- Site Location Plan
- Block Plan
- Pre-Existing Floor Plan
- Existing Floor Plan
- Separate Appendices, containing
 - Current HMO Licence plus letter from Brighton and Hove Council referring to 2012 HMO Licence
 - 2011-2013 Tenant Deposit Scheme Certificate for 5 residents
 - Tenant Deposit Scheme Certificates for 5 residents 2013 to 2020
 - Tenancy Agreements from 2013 to 2020

CIL forms are included – but no CIL is payable as the scheme was not development that requires planning permission (as no new floorspace was created).



RTPI

mediation of space · making of place

Chartered Town Planners

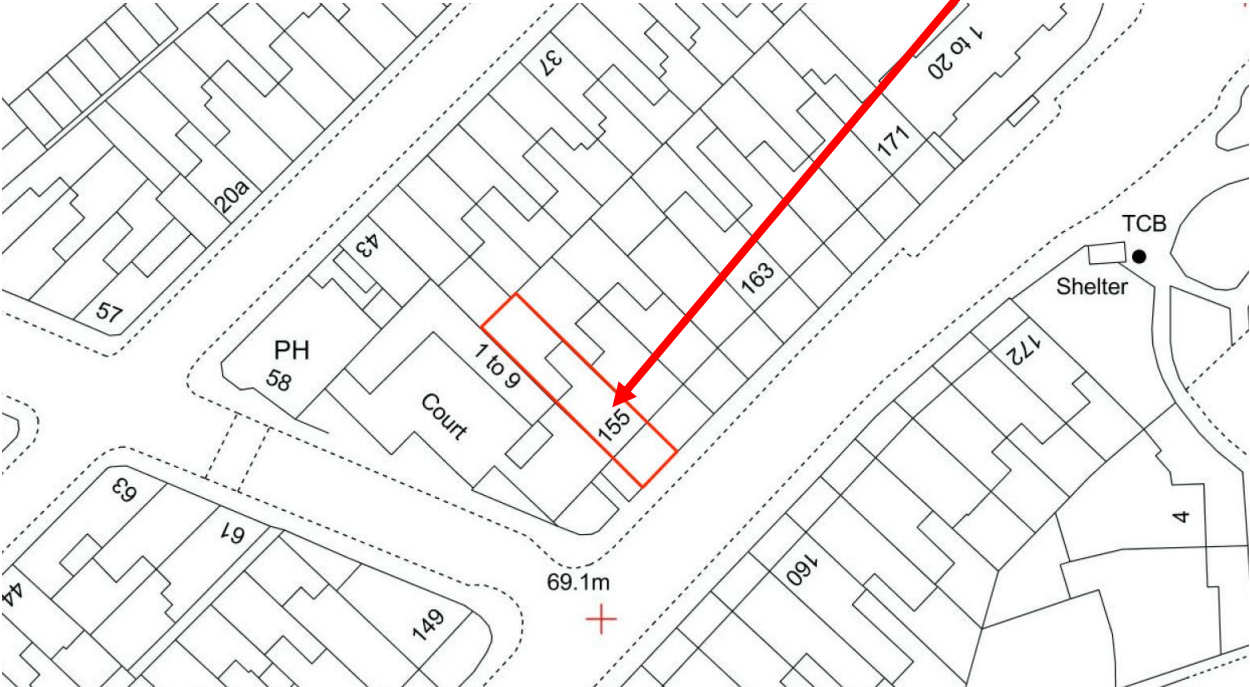
Lewis and Co Planning South East Limited
Company Number 05809390
Registered Office: Preston Park House, South Road,
Brighton, BN1 6SB
Registered in England and Wales

Application Site and Planning History

The application relates to a mid terrace property on the north west side of Queens Park Road – close to its junction with Southover Street.



The Site



The Council's online planning register records one application affecting the site (since 1997) – which was for a change of use from dwelling house to five “assisted” bedsits. The application was withdrawn prior to being determined. The planning register's record card states that the use of the premises was “Class C3 - House in Multiple Occupation”:

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| Application Number: | BH2002/01228/FP |
| Situation: | 155 Queens Park Road Brighton |
| Description: | Conversion of dwelling to provide five 'assisted' bedsits. |
| Applicant: | B K R Building and Maintenance Ltd |
| Agent: | Robert Saunders Partnership 1 Westbourne Grove Westbourne Gardens Hove East Sussex BN3 5PJ 01273 727366 |
| Application Type: | Full Planning |
| Existing use: | C3 - House in Multiple Occupation |
| Application received: | 19 April 2002 |
| Application registered: | 30 May 2002 |
| Latest date for Council decision: | 14 June 2002 |

Such a designation was correct, as most houses with up to 6 people living in them were considered to be in Class C3 (dwellings) use until the C4 Use Class was introduced in April 2010. From April 2010 onwards, the occupation of the house by five persons would have changed by default to Class C4 (Small Houses in Multiple Occupation).

There have been no planning applications registered since the above application.

Works Carried Out

The applicants have created a sixth bedroom through the subdivision of a bedroom on the top floor of the property. A first floor *en suite* has also been removed.

Pre - Existing Floor Plans:



Existing Floor Plans (changes highlighted):



LEGAL BACKGROUND

Government Advice on the issuing of Certificates of Lawfulness used to be contained in Annex 8 Circular 10/97 – “Enforcing Planning Control: Legislative Provisions and Procedural Requirements”. The guidance has now been replaced by new National Planning Practice Guidance, from which the following policy references are relevant:

“Paragraph: 006 Reference ID: 17c-006-20140306

Who is responsible for providing sufficient information to support an application?

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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.”

“Paragraph: 008 Reference ID: 17c-008-20140306

Does a local planning authority need to consult on an application for a lawful development certificate?

There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.”

Paragraph 006 of the Guidance (see above) states that a Certificate should be granted unless contrary evidence makes the applicant's assertions "less than probable". This is in line with historic court decisions, as referred to in paragraph 8.15 of the aforementioned circular 10/97:

"Moreover, the Court has held (see F W Gabbittas v SSE and Newham LBC [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have 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"."

PLANNING CONSIDERATIONS

There are three main considerations to determining the application:

1. What was the pre-existing lawful use of the premises?
2. Did the works result in a change in the lawful use of the premises?
3. Did the proposed works result in physical development that requires planning permission?

Pre-Existing Lawful Use

The pre-existing lawful use was a class C4 Small House in Multiple Occupation (HMO) that allows for occupation between 3 and 6 residents. The C4 use began before 05 April 2013 – which is when the Council introduced an Article 4 Direction preventing houses from being converted into Class C4 HMOs under permitted development rights.

The pre-existing use as five letting rooms was likely to have started around 2003. This is confirmed in the Council's planning application records referred to on page 3 of this letter.

In April 2010, the permitted use of the premises would have changed automatically into Class C4 under the Use Classes Order amendment that created the C4 Use Class. The relevant extract from the Amendment Order is provided overleaf.

STATUTORY INSTRUMENTS

2010 No. 653

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Use Classes) (Amendment) (England) Order
2010

Made

8th March 2010

Coming into force

6th April 2010

The Secretary of State, in exercise of the powers conferred by sections 55(2)(f) and 333(7) of the Town and Country Planning Act 1990(1), makes the following Order:

Citation, commencement and application

1.—(1) This Order may be cited as the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 and shall come into force on 6th April 2010.

(2) This Order applies in relation to England only.

Amendment of the Town and Country Planning (Use Classes) Order 1987

2.—(1) The Town and Country Planning (Use Classes) Order 1987(2) is amended as follows.

(3) In Part C of the Schedule, for Class C3 substitute—

Class C3. Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by—

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents;
or
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Interpretation of Class C3

For the purposes of Class C3(a) "single household" shall be construed in accordance with section 258 of the Housing Act 2004(3)."

(4) In Part C of the Schedule, after Class C3 insert—

Class C4. Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

Further confirmation that the property was in C4 use is provided in correspondence between the Council and the site's former owner. The correspondence is contained in Appendix 1 of the separately submitted appendices for this application. The correspondence (dated 01 September 2016) confirms that an initial HMO licence was granted on 04 December 2012 to cover a 5 year period expiring on 17 October 2016.

Appendix 2 of the separately submitted appendices includes a certificate from the Tenancy Deposit Scheme for 5 tenants for a two year tenancy between September 2011 and September 2013.

Appendices 3 and 4 contain further Tenancy Deposit Scheme certificates as well as tenancy Agreements for the period 2013 to 2020. These all show continued occupation of the premises by five residents.

The submitted information shows that “on the balance of probabilities” the Class C4 use began when the C4 Use Class was first introduced (April 2010), and “beyond all reasonable doubt” that the C4 use was in active use by September 2011 (see Appendix 2). This means that the premises were already in Class C4 use when the Council introduced its Article 4 direction (restricting permitted developments rights for houses to be converted into Class C4 HMOs) in April 2013.

Further tenancy agreements (see Appendices 3 and 4) and correspondence with the Council (see Appendix 1) confirm beyond all reasonable doubt that the site’s existing lawful use has remained as a Class C4 HMO.

Impact of Subject Works on Existing Lawful Use

The site’s pre-existing lawful use as a Class C4 HMO means that up to 6 people could reside at the property. Therefore the creation of a sixth bedroom (to accommodate a 6th resident) has not resulted in any material change of use of the premises: the premises remain in Class C4 use.

Paragraph 3(1) of the Town and Country Planning Use Classes Order confirms that changes that fall within the same use class do not require planning permission. The paragraphs states:

3.—(1) Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land

The works have not resulted in any material change of use that requires planning permission.

Physical Impact of the Works

The conversion works relate only to the interior of the building. Such physical works did not constitute development and therefore do not require planning permission by virtue of **Section 55 (2) (a)** of the Town and Country Planning Act 1990 (TCPA1990). This states that the carrying out of works that only affect the interior of a building, or that do not materially affect the external appearance of the building, do not require planning permission. Section 55 of the TCPA1990 has been amended by Section 49 of the Planning and Compulsory Purchase Act 2004, however the amendments relate to internal alterations that provide additional floor space (i.e. mezzanine floors). No additional floor space has been created and so this amendment is not relevant to the consideration of this application.

Extract from Section 55 of the TCPA 1990:

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| 55 | <p>Meaning of “development” and “new development”.</p> <p>(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.</p> <p>[F1(1A)] For the purposes of this Act “building operations” includes—</p> <ul style="list-style-type: none">(a) demolition of buildings;(b) rebuilding;(c) structural alterations of or additions to buildings; and(d) other operations normally undertaken by a person carrying on business as a builder.] <p>(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—</p> <ul style="list-style-type: none">(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—<ul style="list-style-type: none">(i) affect only the interior of the building, or(ii) do not materially affect the external appearance of the building,and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;(b) the carrying out on land within the boundaries of a road by a F2 . . . highway authority of any works required for the maintenance or improvement of the road [F3but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment];(c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;(d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;(e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class. <p>[F4(g)] the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority]</p> |
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Conclusions

The evidence provided with this application demonstrates that the subject works were lawful and did not require planning permission. This is because:

1. The pre-existing lawful use of the premises was that of a Class C4 Small HMO.
2. The creation of an additional bedroom allows for a sixth person to reside at the premises.
3. The occupation of the premises by up to 6 people means that the premises remain in Class C4 use.
4. There are no external works or change of use.

On this basis, we trust that a lawful development certificate for the creation of a sixth bedroom at 155 Queens Park Road can be issued without delay.

If you would like to discuss the contents of this statement in further detail, please contact Simon Bareham MRTPI on 01273 413700.

Yours faithfully

LCP

Lewis & Co Planning