

South Gloucestershire Council,
Department for Environment and Community Services, PO Box 1954,
Strategic Planning,
Bristol,
BS37 0DD

Our ref: PR002348
Date: 1st December 2023

Sent via e-mail

Dear Sir/Madam,

Town and Country Planning Act 1990 Section 191

63 Kipling Road, Bristol, BS7 0QP

Certificate of Lawfulness for existing use as a small house in multiple occupation for 3-6 people (Use Class C4).

On behalf of my client Mr Chung Bui, please find attached a completed form, and the documents listed below, to accompany this application for a Certificate of Lawfulness for the existing use (CLEUD) of the property as a small house in multiple occupation for 3-6 people (Use Class C4).

I attach the following documents:

- Site location plan (produced via Planning Portal);
- HMO Licence dated 29th March 2023;
- HMO Licence dated 3rd November 2023, and;
- Tenancy agreements (x3) dated 1st July 2023, 1st November 2023, and 3rd November 2023.

Please note that no floor plans accompany this application, which seeks to establish that the building has lawfully changed from a dwellinghouse occupied by a single person or family (Use Class C3a) to a small house in multiple occupation (Use Class C4), and as such, floor plans are not considered necessary to evidence this.

CLEUDs are provided for under Part VII of the Town and Country Planning Act 1990 (as amended) with s.191 relating to existing uses/developments and s.192 referring to proposed use or development.

Under the provisions of s.191(1) any person wishing to ascertain whether an existing use of buildings or other land is lawful or whether any operations which have been carried out in, on, over or under land are lawful can make an application for a certificate of lawful use.

The site falls within the impending Filton and Cheswick Village Article 4, which comes into force on the 10th January 2024, and will remove Permitted Development Rights granted under Part 3, Class L of the GPDO, to change from C3 to C4 (and vice versa) without the expressed consent of the Council.

Planning history and current use

There is no planning history for the site, which was built as a three-bedroom, semi-detached dwellinghouse, with a lounge and separate dining room. The owner-occupier currently rents the property out to three, unrelated individuals, the property therefore operating as a small house in multiple occupation in the C4 Use Class (for the avoidance of doubt, one of the bedrooms is large enough to accommodate a couple, hence the HMO licence is for a maximum of 5 people and 4 households), with the front room serving as a fourth bedroom.

Relevant case law

The onus is placed on the applicants to prove, on the balance of probabilities, that the Certificate of Lawfulness should be granted. This was confirmed in the case of *F W Gabitas v Secretary of State for the Environment and Newham Borough Council* (1985), where the court held that the applicant's own evidence need not be corroborated by "independent" evidence in order to be accepted.

With reference to the balance of probabilities, In the case of *Re H and Others (Minors) (A.P) (Respondents)* (1996), Lord Nicholls explained that the balance of probability test was a flexible one, stating, "*The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was **more likely than not**. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury... The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.*"

In *Miller v Minister of Pensions* [1947] 2 All ER 372, Denning stated that, "*if the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not.*" Expressed in percentage terms, if the conclusion is reached that it is 51% likely that a Certificate of Lawfulness should be granted, then, by the balance of probabilities, it should be granted.

Review of evidence submitted

The accompanying HMO licences, and ASTs for the three tenants, confirm that the property is currently in use as a small HMO, and that four, unrelated individuals (including the owner-occupier), have resided there since 3rd November 2023. As such, the evidence confirms that, on the relevant date (today, the 1st December 2023), the existing use of the property is as a small house in multiple occupation within the C4 Use Class. It is assumed that officers will, if necessary, confirm with Council Tax that this is the case.

Conclusion

In assessing the certificate of lawfulness application, the balance of probability test should be first and foremost in the case officer's mind. The evidence provided above is clear and unambiguous that the building is currently in use as a small house in multiple occupation. There is no evidence available to contradict this. The balance of probability test is passed, and the applicant respectfully requests that a certificate of lawfulness for the existing use as a small house in multiple occupation be issued.

The application fee of £462 has been paid via the Planning Portal. If you require any further information, please let me know.

Thank you in advance for your assistance.

Yours faithfully,

Stokes Morgan Planning Ltd