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Section 191 of the Town and Country Planning Act 1990

## **Planning Statement**

**(resubmission)**

**To accompany an application for a  
Lawful Development Certificate**

**for the  
Existing**

**“use as a small HMO (use Class C4)”**

**At**

**Ground Floor Flat,  
53 Nightingale Grove,  
SE13 6ER.**

**By**

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**November 2023**

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## Introduction

1. This is an application for a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990 for the exiting development and use on land at Ground Floor Flat, 53 Nightingale Grove SE13 6ER.
2. This application for an LDC follows a recent application for an LDC in respect of the same development, the application was however, refused on the basis that the information supporting the application was not sufficient.
3. This application seeks to provide the necessary clarification thereby providing the LPA an opportunity to properly consider the merits of the application considering all evidence provided.

## Decision Letter

4. On 11 September 2023, under Ref: DC/23/132277, the LPA issued a decision letter refusing to issue a lawful development certificate. The LPA's Decision Letter provides one reason for refusal. This is as follows,
  1. The change of use does not meet the requirements for permitted development under Schedule 2, Part 3, Class L.1(b) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) as it results in two or more separate dwellinghouses falling within Use Class C4 (HMO) at 53 Nightingale Grove that was previously used as a single dwellinghouse (Use Class C3). As such the development is not lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended).

## The Delegated Report

5. The Delegated Report provides the assessment behind the reason for refusal. The report notes that the Article 4 Direction does not apply to the Hither Green Ward where the application property is located.
6. The report further notes “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’ “.

7. The report then lists the documents provided and states,

The application property is the ground floor unit of what was previously a single dwelling house and has since been split into two flats. Council has no record demonstrating that the conversion of the single dwelling house in to two flats used as self-contained units was undertaken lawfully. The change of use of the property to an HMO results in two or more separate dwellinghouses falling within Class C4 in a building that was previously used as a single dwellinghouse (Class C3). Therefore, the existing use is not permitted development under Schedule 2, Part 3, Class L of the GPDO and Officers recommend refusing the Lawful Development Certificate (Existing) based on these grounds.

8. The report concludes,

On the basis of the submitted plans and information provided, the conversion of the ground floor flat, which was previously part of single dwelling house, (Use Class C3) to an HMO (Use Class C4) at the Ground Floor of 53 Nightingale Grove is not permitted development under Schedule 2, Part 3, Class L of the GPDO and the established C4 use is not considered lawful. It is therefore recommended permission for the Lawful Development Certificate be refused.

## The Resubmission

9. It is clear that the LPA failed to understand that the property was in lawful use as two flats prior to the change of use of the subject flat to a small C4 HMO.
10. The evidence makes it clear that the subject flat was lawful prior to its change of use to a C4 HMO.
11. As set out below in the section The reasons for determining the development to be lawful, through Article 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as

amended), Class L of Part 3 of Schedule 2 allows for a change in use class “from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order to a use falling within Class C4 (houses in multiple occupation) of that Schedule”.

12. Article 2 of the Order defines dwellinghouses as follows:

“dwelling house”, except in Part 3 of Schedule 2 to this Order (change of use), does not include a building containing one or more flats, or a flat contained within such a building;

13. This means that for the purposes of Part 3, a dwellinghouse includes a flat contained within a building.

14. In this case, the development the subject of this application is the change of use of a lawful flat to a small C4 HMO.

15. Given that the lawfulness of the existing HMO turns on whether the flat was lawful prior to its change to an HMO, the evidence required for this application includes demonstrating the lawfulness of the flat in 2022 prior to the change of the C4 HMO use. Any consideration necessary for the consideration of whether the existing use is lawful, can and must be considered within the remit of this application.

16. Where the evidence is precise and unambiguous, there is no need for the evidence to be corroborated by additional evidence. In this case, the evidence provided is undoubtedly precise and unambiguous.

17. Furthermore, it is clear that the LPA had no evidence to contradict/counter the unambiguous evidence of the applicant.

## The Application

18. The development the subject of this application is lawful pursuant to Section 191(2) of the Town and Country Planning Act 1990 as amended in that no enforcement action be taken in respect of the development.

19. Section 191 of the Town and Country Planning Act 1990 provides that,

191 Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

- (2) For the purposes of this Act uses and operations are lawful at any time if—
- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
  - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3).....

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

- (a) the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,
- (b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or
- (c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

- (a) specify the land to which it relates;
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
- (c) give the reasons for determining the use, operations or other matter to be lawful; and
- (d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

- (a) section 3(3) of the Caravan Sites and Control of Development Act 1960;
- (b) section 5(2) of the Control of Pollution Act 1974; and
- (c) section 36(2)(a) of the Environmental Protection Act 1990.

## The land

20. The site the subject of this application is at Ground Floor Flat, 53 Nightingale Grove SE13 6ER.
21. The application site is a two-storey end-of-terrace property located on the northern side of Nightingale Grove in use as two flats. Both flats are modestly split level and may sometimes be referred to as Maisonettes.
22. This application relates to the Ground Floor Flat. The flat is in use as an HMO and includes three bedrooms with en-suites, and a communal kitchen. The change of use to an HMO occurred on 5 March 2023.
23. All tenants share the communal kitchen.
24. The site is not located within a Conservation Area nor is it a Statutory Listed Building.

## The Development

25. The application relates to an existing use as a small HMO (use Class C4).

## The reasons for determining the development to be lawful

26. The Town and Country Planning Act 1990, Section 171B provides the Time Limits
  - (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
27. This means that, in respect of a change of use to a single dwellinghouse, once the relevant four years has passed, the flat will be lawful.
28. The Courts (Van Dyck and Doncaster) have made it clear that section 171B (2) applies to the change of use of part of a house to a single dwellinghouse.
29. Section 60 - Permission granted by development order, states,
  - (1) Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.
30. The Town and Country Planning (General Permitted Development) (England) Order 2015 is such an Order.
31. Article 3 of the 2015 Order provides inter alia that:

“(1) Subject to the provisions of this Order....., planning permission is hereby granted for the classes of development described as permitted development in Schedule 2 .

(2) Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2 .”

32. Article 2 of the Order defines dwellinghouses as follows:

"dwelling house", except in Part 3 of Schedule 2 to this Order (change of use), does not include a building containing one or more flats, or a flat contained within such a building;

33. Part 3 ‘Changes of use’ of The Town and Country Planning (General Permitted Development) (England) Order 2015, Class L – small HMOs to dwellinghouses and vice versa, permits,

“Development consisting of a change of use of a building—

(a) from a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule;

(b) from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.

Development not permitted

L.1 Development is not permitted by Class L if it would result in the use—

(a) as two or more separate dwellinghouses falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order of any building previously used as a single dwellinghouse falling within Class C4 (houses in multiple occupation) of that Schedule; or

(b) as two or more separate dwellinghouses falling within Class C4 (houses in multiple occupation) of that Schedule of any building previously used as a single dwellinghouse falling within Class C3 (dwellinghouses) of that Schedule.”

34. C4 of the Use Class Order refers to the definition of HMO as defined at s.254 of the Housing Act 2004 save for those HMO's the subject of s257 of that Act. It states,

“Class C4. Houses in multiple occupation

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

Interpretation of Class C4

For the purposes of Class C4 a “house in multiple occupation” does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004.”.

35. It is, therefore, necessary to turn to the Housing Act 2004 to understand what a C4 HMO is and consequently, what is allowed by Class L of the GPDO. It shall be noted that the TCPA provides no definition of an HMO.

36. Section 254 of the Housing Act 2004 states (as far as relevant with emphasis added)

“a building or a part of a building is a “house in multiple occupation” if—

- (a) it meets the conditions in subsection (2) (“the standard test”);
- (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
- (c) it meets the conditions in subsection (4) (“the converted building test”);
- (d) an HMO declaration is in force in respect of it under section 255; or
- (e) it is a converted block of flats to which section 257 applies.

37. At subsection (2) it states;

“(2) A building or a part of a building meets the standard test if—

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
- (c) .....
- (d) .....
- (e) .....; and
- (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

38. At subsection (3) it states;

(3) A part of a building meets the self-contained flat test if—

- (a) it consists of a self-contained flat; and
- (b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

39. At subsection (8) it states;

(8) In this section—

“basic amenities” means—

- (a) a toilet,
- (b) personal washing facilities, or
- (c) cooking facilities;



“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“enactment” .....

“self-contained flat” means a separate set of premises (whether or not on the same floor)—

(a) which forms part of a building;

(b) either the whole or a material part of which lies above or below some other part of the building; and

(c) in which all three basic amenities are available for the exclusive use of its occupants.

40. Therefore, if the rooms within the property do not provide all three basic amenities, the property is within Use Class C4, and the change of use from a single dwellinghouse to such a use would be permitted development. In this case, the rooms do not have all the three basic amenities. All tenants share the cooking facilities.

## Evidence

41. The evidence bundle makes it clear that the subject flat was indeed lawful before the use of the flat was changed to a C4 HMO. Therefore, the change of use was not from a house in use as a single dwellinghouse to two HMO's, but rather a change of use of one of two lawful flats to a C4 HMO.

42. Between 15 February 2023 and 5 March 2023 three rooms were let to three individual unrelated tenants. Therefore, the change of use from a single dwellinghouse to a C4 HMO occurred 5 March 2023.

43. This application bundle includes the following,

A Statutory Declaration,

A large bundle of various documents relating to the use of the flat as a single dwellinghouse for a period over four years (2017-2022), and

The tenancy agreements of the tenants who occupied the property as a small C 4 HMO.

## Date of the application for the certificate

44. This application is made on 30 November 2023.

## Conclusion

45. This application provides information that satisfies the claim that the matters described in the application are lawful at the time of the application.