

Delegated Report

Planning Ref: 26/00528/CLE
Applicant: Mr Ricky Sangara
Ward: Hinckley Castle



Hinckley & Bosworth
Borough Council

Site: 7 Queens Road, Hinckley

Proposal: Certificate of existing lawful development relating to the addition of a flat roof dormer and change of use to a 6 bedroom HMO (Class 4)

1. Recommendations

- 1.1. **Grant Certificate of Lawfulness** for the existing lawful development relating to the addition of a flat roof dormer and change of use to a 6-bedroom HMO (Class 4).

2. Description of application for existing use

- 2.1. The application seeks a certificate of lawful existing use for the additional of a flat roof dormer and the change of use to a 6-bedroom HMO (Class 4).
- 2.2. The application is supported by the following documents:
- Site Location Plan Drg No. LDC-PL01
 - Planning Statement
 - Building Control Approval
 - HMO License
 - HMO Floor Plans
 - Original Floor Plans
 - Dormer Plans and Elevations

3. Description of the site and surrounding area

- 3.1. The application dwelling is located within the settlement boundary of Hinckley in a residential area and in an edge of town centre location. It is a two storey end terraced dwelling with a large flat roofed ground floor bay window (former shop front) of white uPVC and white uPVC boarding and grey roof and a white uPVC bay window and additional flat window at first floor set within red facing brickwork. Only part of the original decorative brick string course and decorative eaves detailing remain.
- 3.2. Queens Road is characterised by terraced rows of two storey dwellings with shallow front gardens/yards. Some are constructed with original red facing bricks and some rendered, some retaining original architectural features and some having had them removed or covered by render or paint. There is also a mix of bay fronted dwellings and plain fronted dwellings within the street scene.

3.3. Relevant planning history

22/00460/HOU

External wall and window alterations to dwelling (following demolition of former shop front ground floor bay window, and first floor bay window)

Planning permission

23/08/2022

13/01070/HOU

Extensions and alterations to dwelling

Planning permission
24/03/2014

08/00330/COU

Change of use of existing retail space to form residential accommodation in association with dwelling
Planning permission
20/05/2008

97/00733/COU

Change of use to guest house with five bedrooms
Refused
17/09/1997

4. Publicity

- 4.1. There is not a statutory requirement to consult third parties on an application for a lawful development certificate. It may however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they possess relevant information about the content of a specific application.
- 4.2. The application was publicised with letters issued to neighbouring residents; no comments have been received.

5. Consultation

- 5.1. No consultation is required for this type of application.

6. Legislation and Guidance

- 6.1. The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the Town and Country Planning Act (TCPA) 1990 (Section 191) as amended by Section 10 of the Planning Compensation Act 1991 provide advice and guidance in respect of applications for certificates of lawfulness of existing or proposed use or development.
- 6.2. Section 191 of the Town and Country Planning Act 1990 (as amended) provides that if a person wishes to ascertain whether:- a) any existing use of land or buildings is lawful, then he/she can apply to the local planning authority for a certificate to that effect.
- 6.3. Uses are lawful at any time if no enforcement action may be taken by the Council, in the present case this means that the applicant has to show that the use claimed has been continuous for a period of at least ten years back from the date of the application.
- 6.4. The burden of proof is on the applicant and the relevant test is the 'balance of probability'. The applicant's evidence in support of the application must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 6.5. In applications such as this, if the local planning authority has no evidence itself to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
- 6.6. It is against this legislative framework that the application is assessed.

7. Appraisal

- 7.1. The key issues are whether the flat roof dormer is considered permitted development, and secondly, if the change of use from a residential dwelling to a 6-bedroom HMO is both permitted development and implemented prior to the Article 4 directions implementation.

Flat Roof Dormer

- 7.2. The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class B relates to additions etc to the roof of a dwellinghouse.
- 7.3. The section confirms development that is permitted: the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
- 7.4. The section confirms that development is not permitted by Class B if: -

a	permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class F1G, M, F2MA, N, P F3, PA] or Q of Part 3 of this Schedule (changes of use);
	<i>Development has not been granted by virtue of the above.</i>
b	any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof;
	<i>The development would not exceed the height of the highest part of the existing roof</i>
c	any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway;
	<i>No part of the development would extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway</i>
d	the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than— (i)40 cubic metres in the case of a terrace house, or (ii)50 cubic metres in any other case;
	<i>The property is a terrace dwelling, and from the submitted plans, confirms that the development, at 18.5 cubic metres, would not exceed the cubic content of the original roof space by more than 40 cubic metres</i>
e	it would consist of or include— (i)the construction or provision of a verandah, balcony or raised platform, or (ii)the installation, alteration or replacement of a chimney, flue or soil and vent pipe; F4...

	<i>The development does not propose any of the above.</i>
f	the dwellinghouse is on article 2(3) land
	<i>The development is not on article 2(3) land</i>
g	the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)
	<i>The dwellinghouse was not built under Part 20</i>
h	the existing dwellinghouse has been enlarged in reliance on the permission granted by Class AA (enlargement of a dwellinghouse by construction of additional storeys)
	<i>The dwellinghouse has not been enlarged in reliance by Class AA</i>

- 7.5. Given the above assessment it is confirmed that the existing rear dormer satisfies the requirements outset within The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class B.

House in Multiple Occupation

- 7.6. The Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class L relates to small HMOs to dwellinghouses and visa versa.

- 7.7. The section confirms that development is permitted, if 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.

- 7.8. The section also confirms that 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.

- 7.9. It is confirmed that the change results from a residential dwelling (Class C3) to a small HMO (Class C4), with 6no. bedrooms provided. This change is confirmed to be permitted development outlined within the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 3, Class L.
- 7.10. The area is however covered by an Article 4 direction, which became effective from 1st May 2026, as identified within the Councils website. It is confirmed that the Article 4 direction is not retrospective and that lawful HMO's in place prior to the aforementioned effective date would not be restricted.
- 7.11. The applicant has submitted various forms of evidence including a HMO license issued by the Environmental Health Officer from Private Sector Housing, dated 6th December 2024. Within the issued license, issued within the Housing Act 2004, within Part 2 licensing of houses in multiple occupation, section 64, it is confirmed that the license specifies the maximum permitted number of persons that may occupy the premises is 10 persons, and it was advised that any more than 6 persons at the time of the issued license may require planning permission.
- 7.12. Following a review of the submitted evidence it is considered that as a matter of fact and degree than the property has operated as a small HMO, permitted by the Town and Country Planning Act, prior to the date of the implemented Article 4 – and as such is lawful.

8. Equality implications

- 8.1 Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-
- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.2 Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.
- 8.3 There are no known equality implications arising directly from this development.
- 8.4 The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

9. Conclusion

- 9.1. The information included in the application for a Certificate of Lawful Existing Use has sufficient evidence to demonstrate that the development including both the rear flat

roof dormer and the change of use from a residential dwelling (Class C3) to a small HMO (Class C4) are both permitted development, and in addition, that the change of use occurred prior to the introduction of the Article 4 direction. A Certificate of Lawful Existing Use may be granted.

10. Recommendation

- 10.1. It is recommended that a certificate is issued because sufficient evidence presented by the applicant has shown that on the balance of probability, the additional development, the rear dormer, and the change of use from a residential dwelling (Class C3) to a small HMO (Class C4) are both permitted development, and in addition, that the change of use occurred prior to the introduction of the Article 4 direction. A Certificate of Lawful Existing Use may be granted.