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## Appeal Decision

Site visit made on 10 December 2019

**by Stephen Brown MA(Cantab) DipArch RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 13<sup>th</sup> February 2020**

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### **Appeal Ref: APP/K1935/X/18/3218192**

### **80 Kymswell Road, Stevenage SG12 9JS**

- 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 Wesley de Villers against the decision of Stevenage Borough Council.
  - The application ref. 18/00600/CLEU, dated 30 September 2018, was refused by notice dated 26 November 2018.
  - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is use of the property as a Use Class C4 House in Multiple Occupation (HMO) under permitted development rights for changes from Class C3 (residential) to Class C4 (HMO) since 21 December 2012 and prior to the Article 4 Direction that came into force on 20 September 2017.
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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 existing use which is considered to be lawful.

### **Preliminary matters**

2. For the avoidance of doubt, I should explain that the planning merits of the existing development are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

### **Reasons**

3. In an appeal against refusal to grant an LDC the main issue for me to determine is whether on the balance of probabilities the Council's decision to refuse the grant of an LDC was well-founded. In that regard the principal question here is whether at the date of application for the LDC, the existing development was lawful.
4. On 20 September 2017 the Council confirmed an Article 4 Direction removing permitted development rights for change of use from Use Class C3 to Use Class C4 under Class L(b) of Part 3 of Schedule 2 to The Town and Country

Planning (General Permitted Development) (England) Order 2015 as amended (the 2015 GPDO).

5. The appeal property is in use as a dwellinghouse occupied by up to six residents. The appellant says that it has been used in this way since December 2012 – that is, as a Use Class C4 HMO. He has submitted rental agreements and bank statements showing continuous use since then. The Council agree that this is the case, and that the change of use occurred before confirmation of the Article 4 Direction.
6. At the time the change of use occurred the GPDO that was then in force<sup>1</sup> included an amendment that had introduced provisions under Class I of Part 3 to Schedule 2 which granted permission for development consisting of the change of use of a building to a use falling within Class C4 of the Schedule to the Use Classes Order from a use falling within Class C3, and *vice versa*. It follows that at the time the change of use occurred the development was lawful. The Article 4 Direction cannot be retrospective, the lawful use must still exist and there has not been a breach of planning control.
7. The Council have applied the time limits set out in s.171B(3) as the test for whether the existing use is lawful. However, the s.171B provisions are applicable where there has been a breach of planning control and set time limits for when such a breach becomes immune from enforcement action. In this case the change of use was lawful under the provisions of the GPDO in force at the time. There has been no breach of planning control in this case, and the s.171B provisions are irrelevant.
8. I therefore find on the balance of probabilities that use of the appeal property as a Use Class C4 HMO was lawful at the date of the application, and that the Council's decision to refuse the grant of an LDC was not well-founded.

### **Reasons**

9. 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 use of the appeal property as a Use Class C4 House in Multiple Occupation (HMO) under permitted development rights for changes from Class C3 (residential) to Class C4 (HMO) 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.

***Stephen Brown***

INSPECTOR

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<sup>1</sup> The Town and Country Planning (General Permitted Development) (England) Order 1995 as amended by The Town and Country Planning (General Permitted Development)(Amendment)(No. 2)(England) Order 2010.

## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(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 the 30 September 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

*The change of use was permitted development under the provisions of Class I(b) of The Town and Country Planning (General Permitted Development)(England) Order 1995 as amended by The Town and Country Planning (General Permitted Development)(Amendment)(No. 2)(England) Order 2010.*

Signed

**Stephen Brown**

INSPECTOR

Date: 13<sup>th</sup> February 2020

Reference: APP/K1935/X/18/3218192

### **First Schedule**

Use of the property as a Use Class C4 House in Multiple Occupation (HMO) under permitted development rights for changes from Class C3 (residential) to Class C4 (HMO) since 21 December 2012 and prior to the Article 4 Direction that came into force on 20 September 2017.

### **Second Schedule**

Land at no. 80 Kymswell Road, Stevenage SG12 9JS.

## NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.



## Plan

This is the plan referred to in the Lawful Development Certificate dated: 13<sup>th</sup> February 2020

by **Stephen Brown MA(Cantab) DipArch RIBA**

Land at: **80 Kymswell Road, Stevenage SG12 9JS**

Reference: **APP/K1935/X/18/3218192**

Scale: DO NOT SCALE



