

Meeting: Planning and Development Committee **Agenda Item:**

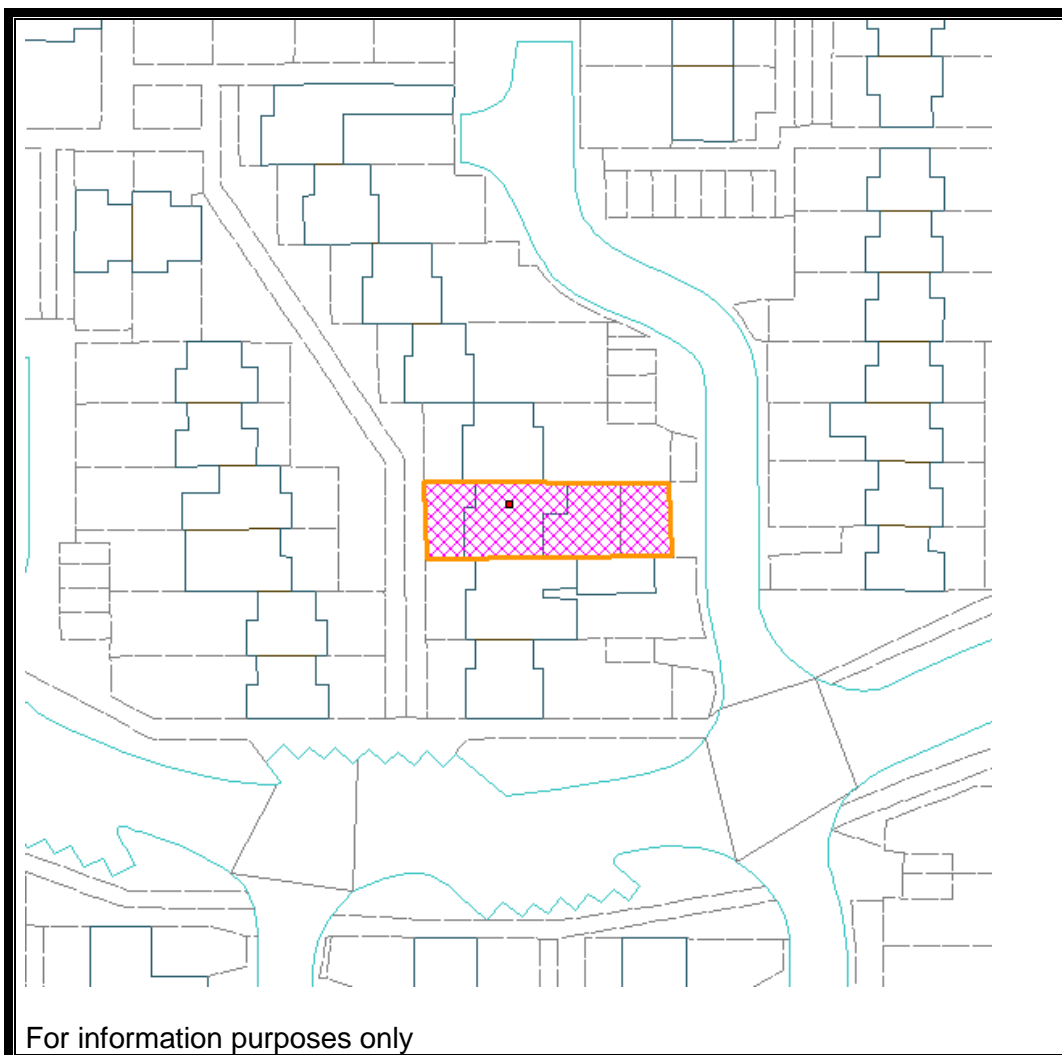
Date: 3 October 2023

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Application No :	23/00618/CLEU
Location :	45 York Road, Stevenage
Proposal :	Certificate of lawfulness for use as a 7 bedroom HMO (Use Class Sui-Generis)
Drawing Nos.:	Site Location Plan;
Applicant :	Mr Brassington
Date Valid:	10 August 2023
Recommendation :	CERTIFICATE OF LAWFULNESS APPROVED



1. SITE DESCRIPTION

- 1.1 The application site comprises a mid-terrace property within a residential area of Stevenage.

2. RELEVANT PLANNING HISORY

- 2.1 99/00345/FP, St Nicholas Area. Detached Single Garage. Granted.
- 2.2 11/00085/FP, St Nicholas Area. Part two storey, part single storey rear extension and first floor front extension. Granted.
- 2.3 23/00165/CLED, St Nicholas Area. Certificate of lawfulness (Existing) use as a 7 bedroom HMO (Use Class Sui-Generis). Refused.

3. THE CURRENT APPLICATION

- 3.1 This application is a Lawful Development Certificate (Existing) for the use of the property as a 7-bed House of Multiple Occupancy (HMO) under use class *sui generis*. The application site is not located in a Conservation Area or any other Article 2(3) land and is not a listed building.
- 3.2 This application comes before the Planning and Development Committee because it has been called-in by Local Ward Councillor Sandra Barr.

4. PUBLIC REPRESENTATIONS

- 4.1 Planning Practice Guidance paragraph 008 Reference ID 17c-008-20140306 states that there is no statutory requirement to consult third parties, including neighbours. It goes on to state that views expressed by third parties on the planning merits of the case are irrelevant when determining the application.

5. CONSULTATIONS

- 5.1. Planning Practice Guidance paragraph 008 Reference ID 17c-008-20140306 states that there is no statutory requirement to consult third parties. It goes on to state that views expressed by third parties on the planning merits of the case are irrelevant when determining the application.

6. RELEVANT PLANNING POLICIES

- 6.1 Section 191 of the Town and Country Planning Act 1990 (as amended) provides that any person who wishes to ascertain whether any existing use or operation/development is lawful may make an application to the Local Planning Authority for a Lawful Development Certificate (LDC).
- 6.2 Section 191(4) states that *“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”*.

- 6.3 Section 171B(3) relates to enforcement of breaches in planning control and states that *"In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach"*.
- 6.4 National Planning Practice Guidance summarises the position in paragraph 003 (17c-003-20140306) in the following terms, *"lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required."*

7. APPRAISAL

- 7.1 Large HMO's (those for more than 6 persons) are unclassified by the Use Classes Order and are therefore deemed to fall within the class of *Sui Generis*. Any change of use to or from *Sui Generis* requires planning permission. The application which has come forward under s191 of the Act is to determine firstly, whether the site has been functioning as a Large HMO and secondly, whether the Large HMO has operated for a period of 10 years or more, unaffected.
- 7.2 Government guidance and planning case law sets out that the onus of proof is placed firmly on the applicant and a certificate of lawfulness may be refused on the basis of proven or present evidence. Critically, the relevant test of evidence is the 'balance of probability' and not the more onerous burden of proof 'beyond reasonable doubt'. The applicant's evidence should be sufficiently precise and unambiguous to justify a grant of this certificate. The planning merits of the use cannot be considered.
- 7.3 A Certificate of Lawfulness application was refused in April 2023 under ref. 23/00165/CLED on the basis it had not been sufficiently demonstrated beyond the balance of probability that the property had been in continuous use as a Large 7 bedroom HMO for a period of at least 10 years. Whilst the evidence submitted was considered sufficient to prove the property was indeed an HMO in 2011/2012, no evidence was provided other than a "statement of truth" that it was in operation for the required 10 years to allow a Lawful Certificate of Existing Use to be issued. The Statements submitted, without evidence to prove their content, were not considered sufficient evidence to prove on the balance of probabilities that the property had been operating continuously as a Large HMO (*Sui Generis*) for at least 10 years.
- 7.4 The evidence submitted under this application to demonstrate the existing use has been continuous over at least the last 10 year period (and since 2011), is as follows:
- Statement of Truth by David Brassington (owner and first managing agent)
 - Statement of Truth by David Savage (managing agent of the property since 2012)
 - Statement of Truth by Richard Seaman - the builder who carried out the initial building works and has handled maintenance in the property ever since
 - List of tenancy start dates
 - Tenancy Agreements from first tenants in 2011
 - HMO Licence with commenced date of 1st October 2018 - current licence for the HMO property for up to 8 persons, as 7 households.
- 7.5 Two elements should be demonstrated as part of this application. Firstly, can the current use of the property be considered to function as a large HMO and secondly has the use been continuous since at least 31st July 2013? This date being 10 years before the submission of this application in August 2023.

Does the building provide a large House of Multiple Occupation?

- 7.6 The building provides 7 bedrooms for a maximum number of 8 occupiers, with shared facilities of kitchen and living area, set over two full storeys. To the front of the property there is a small garden off the public footpath. At the rear, off the access road there is a gravelled area for car parking and a fenced, paved garden area with a garden shed for storage. The ground floor of the property has an entrance porch containing a tumble dryer leading to a hallway. From the hallway are doors to the kitchen / living area, a bathroom with shower, wash basin and wc, a bedroom with ensuite shower, wash basin and wc, a further bedroom and a cupboard containing a washing machine.
- 7.7 The kitchen contains a large hob, microwave, sink, dishwasher, 2 large fridge freezers, worktop and cupboards. The living area contains a dining table and chairs and lounge seating. Stairs from the hallway lead to the first floor which has doors to 2 bedrooms with ensuite shower, wash basin and wc, 3 further bedrooms, a bathroom with shower, wash basin and wc. It is agreed therefore the property provides a large House of Multiple Occupation, being for over 6 occupiers.

Has the use been continuous since July 2013?

Statements of Truth

- 7.8 In regard to this evidence, three Statements of Truth are provided. These are from the owner as applicant - Mr David Brassington, then from Mr David Savage who has managed the property on behalf of the owner since 2012. Thirdly, is one from Mr Richard Seaman, the builder who carried out the initial building works of extension and alterations, and who has carried out various maintenance work at the property ever since. The applicant's Statement of Truth makes reference to the fact that the commercial arrangement for David Savage to lease the property is a fixed monthly fee, which obviously provides him with the financial incentive to let the maximum number of rooms permissible under the HMO licence. He has done so ever since taking over management of the property in 2012.

Tenancy Agreements from first tenants in 2011

- 7.9 This evidence is a collation of the principal pages of each Assured Shorthold Tenancy Agreement, for the first set of 7 tenants of the 7 rooms of the HMO, from the first occupation and start of the large HMO use in July 2011. The evidence demonstrates continuous occupation as a large HMO for in excess of the required 10-year period, being the last 12 complete years, since July 2011.

List of tenancy start dates

- 7.10 This evidence is information collated from the applicant's deposit managing service of My Deposits Protection Scheme. This shows the dates on which new tenancies were started and protected for each respective tenant of the HMO throughout at least the last 10-year period. This demonstrates that there have been multiple tenancies in each year across the 7 rooms of the HMO. The current tenants residing in the property started their tenancies in 2018, 2019, 2020, 2022 and 2023. Furthermore, screen shots have been provided from the logged in account of the My Deposits scheme. This provides evidence of the continuity of the use which was lacking in the previous application.

HMO Licence

- 7.11 Also submitted in evidence is the current HMO licence issued by the Council, which commenced in October 2018. This confirms the property has 7 rooms or 'households' for letting, for a maximum number of 8 persons. There was no requirement for a licence previous to this, so this is the sole licence on record.

8. CONCLUSIONS

- 8.1 For the purposes of Section 171(B) Time Limits, of the Town and Country Planning Act 1990 (as amended), the 10-year rule must apply for Large HMOs of 7 bedrooms or more. It is considered the evidence submitted with this application demonstrates the continuity of the existing use in excess of this time period and the evidence is sufficiently precise and unambiguous to justify the grant of a Certificate of Lawfulness. The applicant has discharged the statutory tests and meets the burden of proof. The evidence meets the relevant required test of 'on the balance of probability' from the Statutory Declarations and other documents provided.
- 8.2 The use of the property known as 45 York Road as a Large 7 bedroom HMO is considered to be lawful under Section 171B(3) of the Town and Country Planning Act 1990 (as amended).

RECOMMENDATION

- 9.1 That the Certificate of Lawfulness is approved for the following reason:
 - 1 On the balance of probabilities, the evidence that has been provided has demonstrated that No. 45 York Road has been continuously operating as a Large House of Multiple Occupation for a period of at least 10 years from the date of the application, and is, therefore, a lawful use that is exempt from enforcement action.

9. BACKGROUND DOCUMENTS

1. The application file, forms, plans and supporting documents having the reference number relating to this item.