

Certificate of Lawfulness Statement

21 Mendip Way, SG1 6GG

Conversion of property from 6 bed / 6 person C4 HMO
into a 7 bed 7 person Sui Generis HMO

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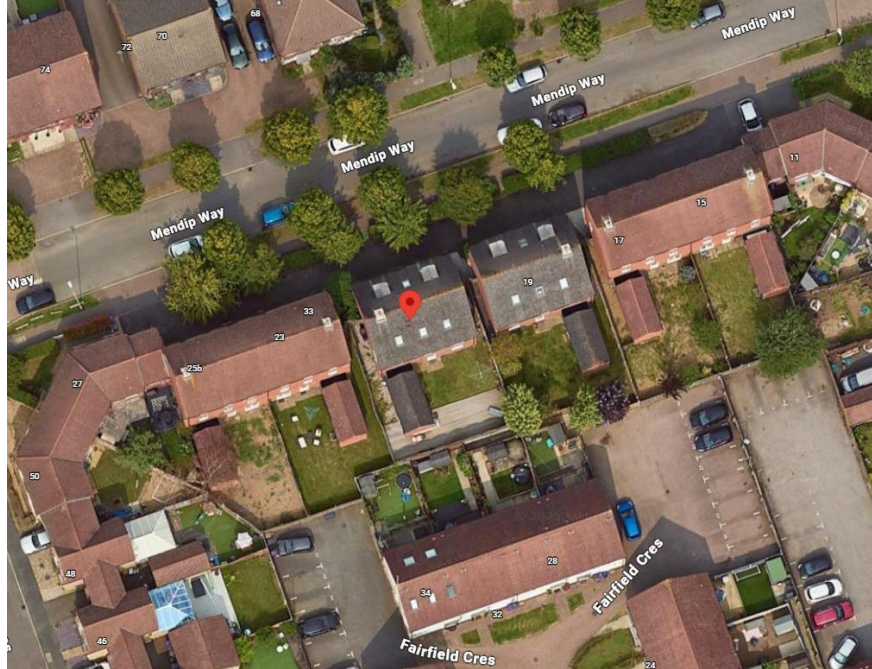
1. Introduction

- 1.1 This statement supports a Certificate of Lawfulness Application at No. 21 Mendip Way, SG1 6GG, to a 7-bedroom house in multiple occupation (HMO). The property currently operates as a C4 (HMO) with 6 residents served by 6 bedrooms.
- 1.2 The proposal requires no external changes to the property; all changes are internal only.
- 1.3 A Certificate of Lawfulness for the addition of a 7th person is sought following the determination of the following 13 appeals.
 - APP/Z1775/C/23/3327364
 - APP/Z1775/C/20/3245106
 - APP/Z1775/C/20/3246078
 - APP/Z1775/C/20/3245110
 - APP/Z1775/C/20/3246079
 - APP/Z1775/C/20/3245108
 - APP/Z1775/C/20/3246077
 - APP/Z1775/C/19/3233187
 - APP/Z1775/C/19/3236610
 - APP/Z1775/C/19/3234941
 - APP/Z1775/C/19/3266831
 - APP/Z1775/C/19/3238003
 - APP/Z1775/C/19/3238287

Within all appeals the Inspector concluded that the change of use from a 6 person HMO to a 7 person HMO was not development requiring planning permission and granted the requested Certificate of Lawfulness.

2. Site Description

- 2.1 The application site is a detached house on Mendip Way approximately 40m east of its junction with Fairfield Crescent. The building is typical of others on Mendip Way being 2.5 storeys in height with existing rooms in the roof.
- 2.2 The property is well served by existing off street parking, a generous garden and an outbuilding to the rear which is currently used for garden storage. The property has 3 parking spaces, the large garage and 2 spaces in front of it.



- 2.3 The local area is well connected to local facilities and public areas of open space. The road is not restricted in terms of parking.

3. Legislative Context

- 3.1 S55(1) of the Town and Country Planning Act provides the legal definition of development that is subject to planning control and states:

- 3.2 55 Meaning of “development” and “new development”.

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

F1[(1A) For the purposes of this Act “ building operations ” includes—

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.]

- 3.3 S55(2)(a) sets out the exemptions to the broad brush approach in S55(1) and states:

(2)The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a)the carrying out for the maintenance, improvement or other alteration of any building of works

which—

(i)affect only the interior of the building, or

(ii)do not materially affect the external appearance of the building, and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;

Relevant Caselaw

3.4 Matters of intensification have been the subject to challenges within the High Court and Court of Appeal and the key judgements on these decisions are:

- R (Lyons) v Secretary of State for Communities and Local Government (2010)
- Childs v First Secretary of State and Test Valley Borough Council (2005),
- Reed vs Secretary of State for Communities and Local Government (2014)
- I'm Your Man case (I'm Your Man Ltd v Secretary of State for the Environment, Transport and the Regions (1998)

4. Description of the Proposal

4.1 This application proposes internal changes only to allow the existing 6 person HMO to be converted to an 7 person HMO.

4.2 The communal kitchen would contain ring hobs, ovens, large sinks, a counter worktop space and individual cupboards. Within the communal area would be a sofas and dining room table to allow for communal living. Access to the garden is available for all residents from the rear facing door.

4.3 Cycle storage is available within the outbuilding which is lockable and secure. Refuse is to be stored internally under the existing overhang, just as is the case for other similarly designed properties in the local area.

5. Case Analysis

Whether the internal works are development requiring planning permission.

5.1 S55(2) of the Town and Country Planning Act 1990 makes clear that works that affect the interior of the building only with no effect to the exterior are not considered development needing planning permission.

- 5.2 As demonstrated on the submitted plans the proposed works affect the interior of the existing building only by making more effective use of the space therein.
- 5.3 As such the works themselves to reconfigure the building internally are not development requiring planning permission and thereby lawful under the provisions of S55(2)(a)(i) of the Town and Country Planning Act 1990.

Whether the increase in the number of persons results in a material change of use.

- 5.4 No.21 Mendip Way has been operating as a 6 person HMO since 2005. The HMO is therefore entirely lawful. The applicant is not aware of any ongoing investigations or complaints regarding the use of the property.
- 5.5 Para 17 of Annex A of Circular 08/2010 provides a starting point to this discussion stating:

“Although the control limit of six persons defines the scope of the C3 (b) and (c) dwellinghouses and C4 houses in multiple occupation classes, this does not imply that any excess of that number must constitute a breach of planning control. A material change of use will occur only where the total number of residents has increased to the point where it can be said that the use has intensified so as to become of a different character or the residents in relation to C3 no longer constitute a single household.”

- 5.6 Fundamentally the case law on the subject of intensification has held that an LPA cannot require a new planning application to be submitted or enforce on the basis of intensification alone. Pure intensification of a use does not bring about a “material” change of use requiring planning permission. Only if the character of the use changes in a material way will an application be required. The key caselaw follows:

Childs v First Secretary of State and Test Valley Borough Council (2005)

- 5.7 The Child's case concerned a site with a lawful use certificate for four residential caravans.
- 5.8 The applicant was refused certificates for 8, 15, 30 and 50 caravans. The High Court held that the extent to which intensification constitutes a material change is a matter of fact and degree, to be considered in light of the character of the use. In this case, the judge decided that the degree of change in the nature of the use would be material and planning permission would be required.

R (Lyons) v Secretary of State for Communities and Local Government (2010)

- 5.9 In the same way, the Lyons case considered the nature and degree to which intensification affected the character of the land in question. The claimant sought to quash an inspector's decision upholding an enforcement notice requiring a reduction in aircraft numbers at Damyns Hall Aerodrome in east London. In March 2007, a lawful use certificate had been issued for the site that limited the number of aircraft to 15. In April 2009 the number of aircraft present on the site totalled 41.
- 5.10 The appellant argued that the inspector had failed to give adequate reasons for concluding that intensification of the aerodrome use had changed its character. The inspector followed the process set out in Childs, taking the certificate figure as his starting point. Applying common sense, he accepted that a breach of this figure by one or two aircraft would not amount to a material change. However, he felt that the impact on green belt openness and the visual harm caused by 26 extra aircraft resulted in a material change in the character of the use.

Reed v The Secretary of State for Communities and Local Government & Anor (2014)

- 5.11 In Reed this case turned on the whether the intensification of and change of use of the land from agricultural to use for the stationing of two number static mobile homes, touring caravans for residential use, one number storage container, and one number mobile utility block. The inspector found that there was a mixed use on the site and one element of the mixed use, namely the use for equestrian purposes, had remained unchanged. The only change was from one static and one touring caravan, to two static mobile homes, touring caravans, and a storage container; the storage container was used as a day room and domestic storage for Mr Hume, who was the occupant of the second mobile home.
- 5.12 The Inspector's answer to the Ground C Appeal was "However, the additional caravan amounts to a doubling of the number of residential caravans permitted on the land and I am satisfied on a fact and degree basis that the alleged material change of use has occurred. Therefore, the matters alleged in the corrected notice constitute a breach of planning control and the appeal on ground C fails."
- 5.13 The Appellant concluded that the inspector had either a) applied the wrong test and assumed that "mere intensification" amounted to a change of use even if it did not change the character of the mixed equestrian/residential caravan site use of the land, or b) if the inspector had considered whether there had been a change not merely in the number of caravans on the land but in the character of the mixed use, then he did not give any, or any adequate reasons for concluding that there had been a change in character.
- 5.14 The judge dealt with this ground of challenge in paragraphs 80 to 92 of his judgment which is reported at [2013] EWHC 787 (Admin). In paragraphs 87 to 90 the judge said this:

"87) Put in these terms, the appellant's submission on ground 2 does have a technical and somewhat unattractive quality. The appellant does not and cannot submit that erecting two caravans rather than one could not constitute a material change of use as a matter of law.

88) The inspector did not have regard to the size or location of the caravan for this purpose (that would have been impermissible) he merely had regard to number.

89) I accept Mr Greateorex's submission that materiality is a matter of judgment for the inspector. The inspector after all rejected the section 142(2)(a) appeal, from which it may be inferred that the number of caravans was relevant to the issue of whether planning permission ought to have been granted.

90) I do not accept Mr Rudd's submission that he can draw solace from the decision of the Court of Appeal in Hertfordshire County Council v Secretary of State ... the facts there were somewhat different. There was one and the same scrap yard with a significantly increased level of throughput. Here we have two caravans rather than one."

- 5.15 When he was considering the ground C appeal the inspector had to correctly direct himself as to the test to be applied if he was to conclude that an increase in the number of caravans on the site had been such as to amount to a material change of use. The inspector, did not refer to intensification in the decision. That would not necessarily have been fatal if it had been plain from the decision that he had correctly directed himself, but the inspector did not expressly conclude that there had been a change in the character of the mixed use. On the face of the decision, the character of the mixed use remained the same for equestrian purposes and as a caravan site for gypsies.
- 5.16 If the inspector did consider whether there had been a change in the character of the mixed use on the site, then it would seem that the sole basis on which he concluded that there had been a material change of use was the simple fact that the additional caravan amounted to a "doubling of the number of caravans". A caravan site with four caravans rather than two caravans upon it still has the character of a caravan site, that is the very reason for the imposition of conditions relating to the numbers of caravans such as were imposed on the 2007 permission granted on appeal. Thus, the only express reasoning in the decision is consistent with the inspector having adopted an erroneous approach: that "mere intensification" could amount to a material change of use.
- 5.17 For these reasons, whether one focuses on the judge's reasoning or on the inspector's reasoning in paragraph 31 of the decision, there is no doubt that the

inspector did apply the wrong test, namely a mere intensification test, and that was the reasoning for allowing the appeal in this case.

I'm Your Man case (I'm Your Man Ltd v Secretary of State for the Environment, Transport and the Regions (1998).

5.18 The I'm Your Man case (I'm Your Man Ltd v Secretary of State for the Environment, Transport and the Regions) established the principle that where planning permission is granted for a certain use, any limitation on the way that use is exercised must be imposed by express condition, not just in the description of the development.

5.19 The principles laid down in I'm Your Man have now been examined and reaffirmed in Winchester City Council v Secretary of State for Communities and Local Government and others [2015] EWCA Civ 563.

Why are the above relevant to this Case

5.20 When applying the above principles to the case in point we must discount any argument of pure intensification alone and focus on whether the addition of a person to an otherwise unfettered Class C4 HMO results in a material change of use.

5.21 In respect of the outward appearance and character of the proposed use the development would seek the addition of 1 person.

5.22 The conversion works now proposed plainly do not mount to development as highlighted above and were the additional bedroom used for any other purpose there would be no discussion to be had on whether there is or is not a material change of use.

5.23 The works in themselves do not change the nature or character of the use or indeed affect its designation as an existing large HMO. In essence the HMO use will remain as such with the works in place.

5.24 **Fundamentally, applying the principles as set out above the character of the building would remain as an HMO, there would be no detectable intensification of the building that would result in a material change of use and as such the proposal does not result in development as set out within S55(1) of the Town and Country Planning Act as the addition of a bedroom and 1 person to this building would not result in a material change of use by fact or degree.**