

DELEGATED REPORT

Report by Mark Kilby	Date of report: 19/05/2022	Ref: 68239/LDCP
Registration: 21/03/2022	LDFC:	Expiry Date: 16/05/2022
Site Visit:	Site Notice: N/A	Press Date: N/A
Objections:	Con Area: N/A	Adv Type: NONE
Reason for Delay:		EIA: NA
N/A		Dec Level: DEL
		Stat Class: NREQ

Proposal: Lawful development certificate for proposed change of use from small HMO (Use Class C4) to large HMO (sui generis) limited to 7 residents

Location: 181 Tottington Road, Bury, BL8 1RX

Description

The site relates to a terraced property, No 181 Tottington Road, which is the second to the end dwelling on a row of similar typed terraces. The dwellinghouse was converted to a 6 no. house of multiple occupation (HMO) under permitted development (Use Class C4).

The row fronts a main road and there is an unmade cobbled alley which runs along the back of these houses. To the west and adjacent to the end terraced is a side street, Cornall Street where there is on street parking. The surrounding area predominantly comprises terraced houses in a traditional linear formation.

No 181 is a 2 storey property with accommodation in the roof space and rear dormers. There is also a small 2 storey rear outrigger. There is a rear yard where bins are stored and which provides a small level of outdoor amenity space which is enclosed by a high wall and gate.

Internal accommodation comprises -
Basement - 2 no. bedrooms and en-suites
Ground floor - living room and kitchen
First floor - 2 no. bedrooms and en suites
Second floor - 2 no. bedrooms and en suites

The application for lawful development under Section 192 of the Town and Country Planning Act 1990 is for the proposed change of use from a 6 no. bedroom HMO (Class C4) to a 7 no. bed HMO (Sui generis) limited to 7 residents. The ground on which lawful development is being sought is that the change of use from a 6 bed HMO to a 7 bed HMO limited to 7 residents would not be a material change of use requiring planning permission and would therefore be lawful.

It is proposed to convert the communal living area at ground floor to provide the additional 1 no. bedroom en suite. The remainder of the internal arrangements and accommodation would not change. the proposed site layout shows additional bins and a 6 no. cycle store would be provided in the rear yard.

Relevant Planning History

67542 - Change of use from 6 no. bedroom house in multiple occupation (HMO - Class C4) to 7 no. bedroom house in multiple occupation (HMO - Sui Generis) - Refuse/Refused
17/12/2021
21/0191 - Change of use from residential property to 7 bed HMO (house of multiple occupation) and rear dormer extension - 01/06/2021

21/0419 -

Change of use from 6 bed HMO to 7 bed HMO - 26/01/2022.

Publicity

Not applicable.

Statutory/Non-Statutory Consultations - None.

Pre-start Conditions - None.

Unitary Development Plan and Policies

Issues and Analysis

The definition of development in section 55(1) of the 1990 Act includes “the making of any material change in the use of any buildings or other land”. However, while the intensification of a use can amount to a material change of use, the Courts have held that the mere intensification does not in itself constitute a material change of use. The key determinant in this respect is whether the degree of intensification is such that it amounts to a material change in the character of the use.

Planning application 67542 - Change of use from 6 no. bedroom house in multiple occupation (HMO - Class C4) to 7 no. bedroom house in multiple occupation (HMO - Sui Generis) which was refused on the 17/12/2021 is identical to this application for lawful development for the following reasons:

1 - The lack of dedicated off-road parking provision is likely to lead to vehicles parking and carrying out manoeuvres on the highway to the serious detriment of the free flow of traffic and road safety. The proposal is therefore unacceptable and would be contrary to the NPPF and UDP Policies HT2/4 Car Parking and New Development and H2/4 Conversions and supplementary guidance document SPD13 Conversion of Buildings to Houses in Multiple Occupation.

2 - The proposed development, by virtue of the increased occupation and loss of communal space, would result in a loss of facilities and amenities available to the existing and future occupiers of the property and as such would have a detrimental impact on residential amenity of the occupiers. The proposed development would therefore be contrary to Bury Unitary Development Plan Policies H1/2 - Further Housing Development, H2/1 - The Form of New residential development, H2/2 - The Layout of New Residential Development and H2/4 - Conversions.

The scale of the increase would be 1 additional resident.

The applicant has provided supporting evidence by way of planning appeal decision notices for similar proposals where lawful development had been refused and allowed on appeal.

Appeal Ref: APP/Y1110/X/15/3132534
32 Danes Road, Exeter, EL4 4LS

The certificate of lawful use or development is sought for change of use from small HMO (Use Class C4) to large HMO (sui generis) limited to 7 residents - Appeal Allowed.

Appeal Ref: APP/D1780/X/20/324556
50 Gordon Avenue, Southampton, SO16 6WD

8 Bed House in multiple occupation - Appeal Allowed.

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The above appeal decisions layout the approach to determining what degree of intensification of use would lead to a change in the character of the use that would constitute a material change of use requiring planning permission with regard to Section 55 of the Act. And in so doing taking the starting point for change from the existing base level of activity of the use.

In this case, the base level of activity is the lawful use as a small HMO with 6 residents.

The question is whether the proposed change of use would constitute a degree of intensification that amounts to a material change in the character of use requiring planning permission.

The reasons for the refusal of planning application 67542 amount to planning reasons with regard to planning merit, planning policy and highway safety with particular regard to lack of off road parking and the form and layout of the alterations to provide the additional bedroom.

Whilst there would be an intensification of use of the site by virtue of 1 additional resident from the base line activity this does not amount to a change in the character of the use of the land and building. There is no evidence that current on street parking is at capacity or the addition of 1 resident together with its internal alterations and its associated activity such as visitors and day to day comings and goings would change the character of the use.

The use for which the LDC is sought would be an intensification of the existing use as more people would be residing at the property. And, it would fall outside Use Class C4. However the circumstances in this instance are such that as a matter of fact and degree, the proposed use would not amount to a material change of use. It would not therefore amount to development as defined by Section 55 of the 1990 Act and so would be lawful.

Recommendation: LAWFUL

Conditions and Reasons:

- 1 The proposal, described in the First Schedule, is not deemed not to be constitute development within the meaning of Section 55 of the Town & Country Planning Act 1990.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
Mark Kilby	19/05/22		