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## Appeal Decision

Site visit made on 11 April 2016

by **D H Brier BA MA MRTPI**

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

Decision date: 06 May 2016

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**Appeal Ref: APP/Y1110/X/15/3132534**

**32 Danes Road, Exeter, EL4 4LS**

- 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 Mr & Mrs R & H Sanders against the decision of Exeter City Council.
  - The application Ref 15/0346/18, dated 24 March 2015, was refused by notice dated 23 April 2015.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The certificate of lawful use or development is sought for change of use from small HIMO (Use Class C4) to large HIMO (sui generis) limited to 7 residents.
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### Decision

1. I allow the appeal and I attach to this decision a certificate of lawful use or development describing the proposed use which I consider to be lawful.

### Preliminary Matters

2. Both the LDC application and the subsequent appeal form indicate that the LDC application was made under section 192 of the 1990 Act, that is in respect of a proposed use of the appeal property. The Council's Officer's report on the application refers to the appeal property having 5 bedrooms, whereas I saw that it now contains 7, including 2 bedrooms at second floor level that have been formed within the roof space. Both parties have confirmed that the works to provide additional accommodation at the property were carried out after the LDC application was made.
3. The question of establishing the lawfulness or otherwise of an existing use or any associated building operations comes within the ambit of section 191. But, as section 192 does not empower me to determine the lawfulness of an existing use, my decision will be made solely on what was applied for under section 192. It would still be open to the appellants to make a separate application under section 191, but determining that would be a matter for the local planning authority in the first instance

### Appeal

4. The Officer's report indicates that the appeal property was currently "*in lawful use*" as a Class C4 house in multiple occupation (HIMO) and was occupied by students. Class C4 of the Town and Country Planning (Use Classes) Order
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- 1987, as amended, which is headed 'Houses in Multiple Occupation' indicates that the class applies to the use of a dwellinghouse for this purpose "*by not more than six residents*". In the light of this, it is perhaps self-evident that the use proposed, that is the occupancy of the property by 7 residents, would fall outside Class C4. Likewise, it is equally apparent that the additional occupancy would represent an intensification of the use of the property.
5. 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.
  6. There is some difference of opinion as to how many people lived in the property at the time of the LDC application. The statement in support of the application indicates that the property "*currently houses six residents*", whereas the Officer's report refers to the Case Officer having been advised that 5 people resided there. However, regardless of whether the 'baseline' for assessing the materiality of the change proposed in this instance is 5 residents or no more than 6, namely the use right conferred by Class C4, I am not inclined to attach a great deal of weight to the apparent difference in the number of residents.
  7. Activity associated with the use is a facet of its character and any increase in the number of people living at the appeal property would probably result in a commensurate increase in general activity and comings and goings. This is likely to be the main consequence arising from the LDC proposal. I am mindful that this was one of the concerns of the Inspector who dismissed a section 78 appeal at No.8 Velwell Road which has been drawn to my attention<sup>1</sup>. Nevertheless, whether the scale of the increase would be 2 extra residents or just one, the additional degree of activity is unlikely to be so great that it would materially alter the fundamental character of the use of the appeal property as a HIMO.
  8. The works to the property carried out after the LDC application was made could be regarded as a physical manifestation of the use in question that also has a bearing upon its character. But, as these works did not form part of the application, this is not a matter to which I attach weight in assessing the merits of the LDC proposal.
  9. I recognise that the use for which the LDC is sought would be an intensification of the existing use as more people would be residing at the appeal property. And, it would fall outside the ambit of Use Class C4. Be that as it may, the circumstances of this case are such that I find 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.
  10. For the reasons given above, and having regard to all the other matters raised, I am satisfied on the evidence now available that the Council's decision to refuse to issue a LDC in respect of the change of use from small HIMO (Use

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<sup>1</sup> Appeal Decision APP/Y1110/A/13/2196245 dated 19 September 2013.

Class C4) to large HIMO (sui generis) limited to 7 residents was not well-founded and that the appeal should succeed. I shall exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act.

*D H Brier*

Inspector

## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2010: ARTICLE 35

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**IT IS HEREBY CERTIFIED** that on 24 March 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposal did not constitute development as defined by section 55 of the 1990 Act.

Signed

*D H Brier*

Inspector

Date: 06 May 2016

Reference: APP/Y1110/X/15/3132534

### **First Schedule**

Change of use from small HIMO (Use Class C4) to large HIMO (sui generis) limited to 7 residents.

### **Second Schedule**

Land at 32 Danes Road, Exeter, EL4 4LS.

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule. Any use /operation 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.