

<b>Committee Date</b>	03.08.2023	
<b>Address</b>	96 Imperial Way Chislehurst BR7 6JR	
<b>Application Number</b>	22/03120/ELUD	<b>Officer</b> - Victoria Wood
<b>Ward</b>	Chislehurst	
<b>Proposal</b>	Change of use from use class C3 to C4 HMO LAWFUL DEVELOPMENT CERTIFICATE (EXISTING)	
<b>Applicant</b>	<b>Agent</b>	
Mr Hoffman	Mr. Stern	
96 Imperial Way Chislehurst BR7 6JR	Unit 9B Fountayne Road Tottenham Hale London N15 4BE	
<b>Reason for referral to committee</b>	Call-In	<b>Councillor call in</b>  Yes - Cllr Mike Jack  Concern over impact on local residents.

<b>RECOMMENDATION</b>	Existing Use/Development is Lawful
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<p>KEY DESIGNATIONS</p> <p>Article 4 Direction Biggin Hill Safeguarding Area London City Airport Safeguarding Smoke Control SCA 16</p>
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<b>Representation summary</b>	Neighbour letters sent 25.08.2022
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Total number of responses	5
Number in support	0
Number of objections	5

## UPDATE

This application was deferred by members on the 9<sup>th</sup> February 2023 for further information as to whether the use commenced before 1st September 2022 and for copies of the applicant's evidence to be provided to Members.

Additional information has been provided by the applicant and neighbouring residents which can be summarised as follows:

### Applicant –

- Statement from the builder
- Invoices from: builder supplier, plumber, kitchen and bathroom and carpet fitters
- Additional rental statements from 3 tenants covering the period from 20<sup>th</sup> July 2022 – 20<sup>th</sup> December 2022

### Neighbours –

- Timeline of events from the neighbour's perspective
- Declarations from 5 residents and a Ward Councillor stating that "*to the best of my knowledge there were no persons living at 96 Imperial Way ... before the 1<sup>st</sup> September 2022*"

The report is repeated below and updated where necessary.

**Prior to the meeting Members will be provided with a confidential pack containing all the supporting documents provided by the applicant and local residents.**

## 1. SUMMARY OF KEY REASONS FOR RECOMMENDATION

- 1.1. The proposal seeks formal confirmation from the Council that the use of the dwellinghouse as a 6 bedroom – 6 person C4 House in Multiple Occupation is lawful.
- 1.2. Lawfulness is only assessed as of 2 August 2022, which was the date of the application. This predates the Article 4 Direction removing permitted development rights for a change of use –to small HMOs, which took effect on

1 September 2022. As such the property continued to benefit from the permitted development right under Class L on the date the application was submitted, and the certificate can only be assessed on this basis.

## 2. LOCATION

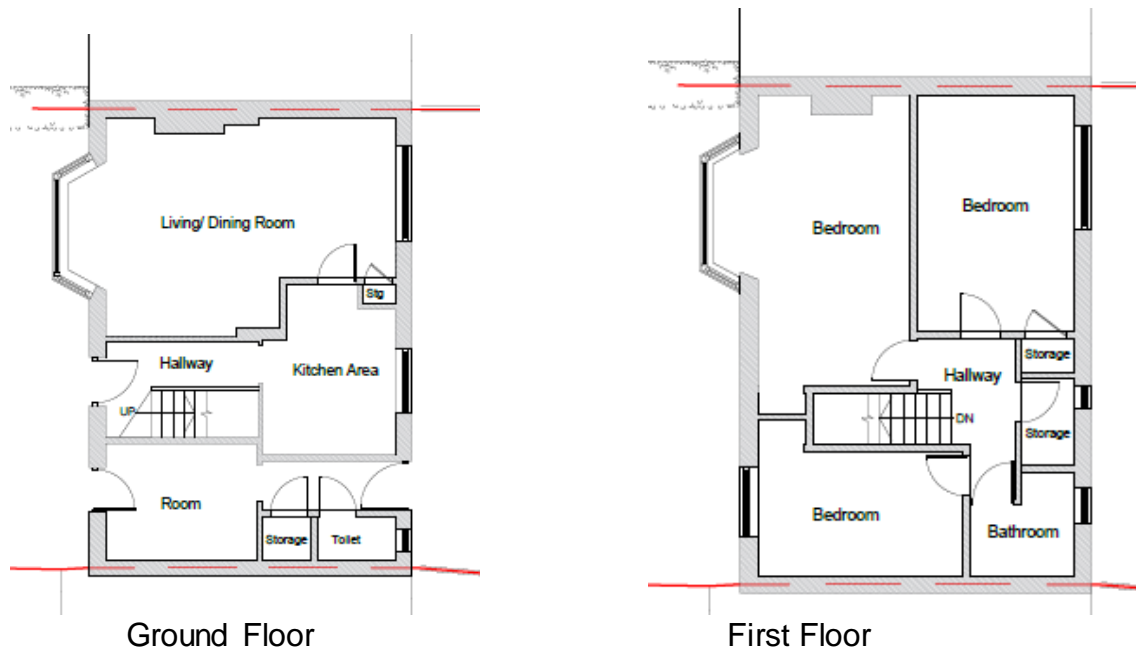
- 2.1. The application site hosts a mid-terraced two storey dwelling on the north-easter side of Imperial Way, Chislehurst. The property was originally a is a 3 bedroom property with a single storey rear extension recently constructed.



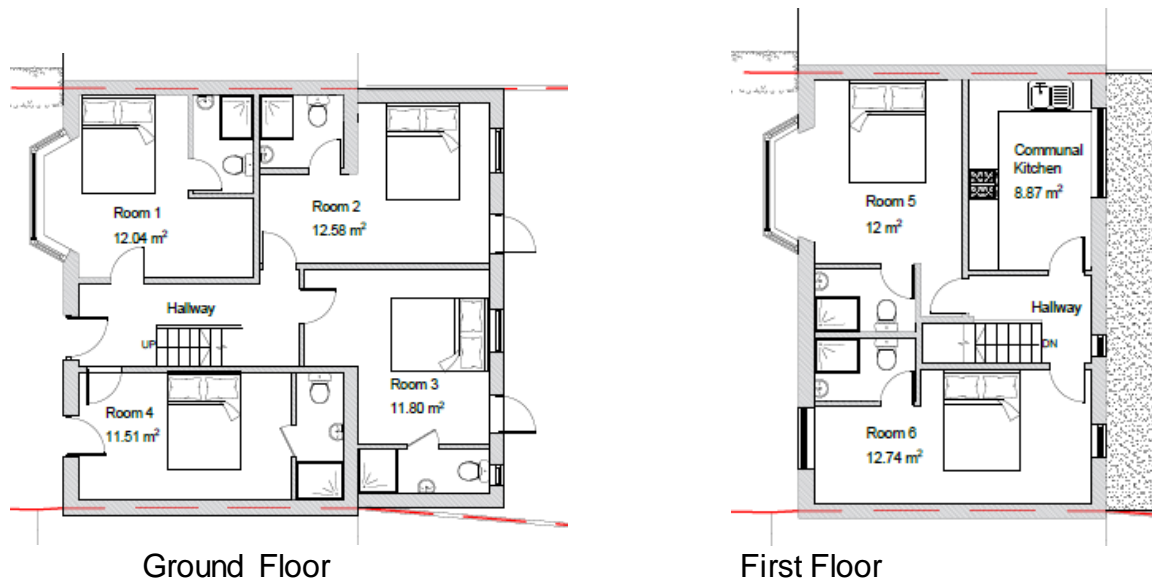
**Figure 1: Site Plan**

## 3. PROPOSAL

- 3.1. The proposal seeks formal confirmation from the Council that on the date of the application it was lawful to use the property as a small C4 HMO of 6 rooms for up to 6 people in total.



**Figure 2: Pre-Existing Floor Plans**



**Figure 3: Existing Floor Plans (After conversion to HMO)**

#### 4. RELEVANT PLANNING HISTORY

4.1. There is no relevant or recent planning history.

## **5. CONSULTATION SUMMARY**

### **A) Statutory**

- 5.1. There is no requirement to consult any statutory consultees due to the nature of this application. Comments have however been sought which can be summarised as follows:
- 5.2. Environmental Health Housing: No objections – a licence was issued on 18.08.2022.

### **B) Adjoining Occupiers**

**The application is for a Lawful Development Certificate for an Existing Use, as part of the Council's commitment to the statement for community involvement adjoining neighbours were notified of the application. Comments were received which have been summarised below for Member's information however, not all are relevant to assessing an application for the lawfulness of the use or development claimed. They have therefore been separated accordingly.**

#### **Material:**

- This was not occupied as an HMO in July, it has only been builders until 7<sup>th</sup> September
- Builders' materials/skips etc only removed in September which confirms that the premises was not occupied before then
- Noise and disturbance associated with this number of unrelated people living in this house
- Property was not used as an HMO until after 9<sup>th</sup> September
- Timeline of the property as viewed from the residents including photographs
- Signed declarations from 5 neighbours and a Ward Councillors stating that to the best of their knowledge the property was not occupied prior to 1<sup>st</sup> September 2022.

#### **Immaterial:**

- loss of a family dwelling house
- This house was owned privately and possibly part owned by a housing association
- This is a family area close to shops and schools
- HMO not appropriate in this area
- Concern over 6-12 strange adults living in the property
- Concern over the occupants and background/vetting process of new tenants
- Concern that not all neighbours were notified of development
- No party wall agreement was sought/carried out
- Noise and disturbance during construction works
- Damage to neighbouring fences
- Concern over the unauthorised rear extension which was built
- Loss of privacy/daylight from extension

- Other neighbours have been refused planning permission for similar extensions
- Concern over increase in parking
- This road is a busy bus route
- Property not maintained

Please note the above is a summary of objections received and full text is available on the Council's website.

## **6. POLICIES AND GUIDANCE**

### **Housing Act (2004)**

### **Town and Country Planning Act (1990)**

### **The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)**

### **National Planning Practice Guidance (NPPG)**

### **Permitted development rights for householders Technical Guidance 2019**

- 6.1. This proposal must be assessed against Class L, Part 3 of Schedule 2 of the General Permitted Development Order 2015 (as amended), specifically whether it conflicts with any of the limitation/conditions therein.
- 6.2. In order to qualify as an HMO, the property must be used in a way which meets 7 criteria, which are discussed below. Finally, as this is an application for an existing (rather than proposed) use, the change of use must have actually occurred. This does not necessarily mean that on the application date 6 tenants had to be living in the property. This is one factor to take into account along with others, such as the physical state (e.g. whether there conversion works ongoing).
- 6.3. If an application includes a statement or document which was false in a material particular or if any material information was withheld, the Council may subsequently revoke that certificate. In addition an applicant can be guilty of certain crimes, such by deliberately making false statements or submitting forged documents,
- 6.4. It is not anticipated that determination of this application would adversely affect any of the objectives to be considered under the public sector equality duty.

## **7. ASSESSMENT**

### **7.1 Procedural Matters**

- 7.1.1. Lawfulness is only assessed as of the date of the application submission, which predates the Article 4 Direction removing permitted development rights for a change of use under Class L - small HMOs to dwellinghouses and vice versa. It is a matter of fact that the property continued to benefit from permitted development right under Class L on the date the application was submitted and the certificate must be assessed on this basis.
- 7.1.2. Representations received on this application are noted, however as this is a Lawful Development Certificate matters relating to the planning merits of the proposal cannot be taken into consideration and do not affect the lawfulness of the proposal. Furthermore, some of the comments relate to car parking, disturbance from construction and building works etc., and those matters are private civil matters to be addressed and managed by the parties concerned and are not for consideration by the Council and/or under this Lawful Development Certificate. Furthermore, those matters would appear to be capable of being controlled or managed by the private landowner or by other consents required such as, environmental health and HMO licence.
- 7.1.3. This application must be assessed on the civil balance of probabilities test. The Government guidance states that, if a Local Planning Authority has no evidence itself, nor from any others, to contradict or otherwise make the Applicant's version of events less than probable, there would be no good reason to refuse the application, provided that the Applicant's evidence alone is sufficiently precise and unambiguous.

### **7.2 Evidence/information**

- 7.2.1 The following information has been provided by the applicant/agent to support the application:
- Existing and pre-existing floor plan drawings,
  - Assured Shorthold Tenancy Agreement for the following tenants:
    - Ms A (Unit1) dated 20.07.2022- 19.01.2023
    - Mr B (Unit 2) dated 20.07.2022 – 19.01.2023
    - Mr C (Unit 3) dated 20.07.2022 - 19.01.2023
  - Planning Statement
  - Statutory Declaration
  - Tenancy Deposit Protection x3
  - Invoices from builders merchants, plumber, kitchen and bathroom suppliers and carpet fitters
  - Rental Statements x3
  - Letter from the builder who carried out the works.

### 7.2.2 Information from 3<sup>rd</sup> Parties

- Timeline of the property as viewed from the residents including photographs
- Signed declarations from 5 neighbours and a Ward Councillors stating that to the best of their knowledge the property was not occupied prior to 1<sup>st</sup> September 2022.

### 7.2.3 Council's Evidence

- Council Tax records
- HMO Licensing records

## 7.3 Class L - small HMOs to dwellinghouses and vice versa

7.3.1 Class L Part 3 of Schedule 2 of the GPDO relates to the change of use of small HMOs to dwellinghouses and vice versa and states as follows:

7.3.2 L. Development consisting of a change of use of a building-

- (a) from a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule;
- (b) from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.

7.3.3 According to the Council's records, submitted details and site observations the dwelling would have fallen within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order at the time the application was submitted. The development consists of a change of use of the existing dwelling (C3 dwellinghouse) to use falling within Class C4 (small houses in multiple occupation) as permitted by Class L paragraph L(b).

7.3.4 L.1 Development is not permitted by Class L if it would result in the use—

- (a) as two or more separate dwellinghouses falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order of any building previously used as a single dwellinghouse falling within Class C4 (houses in multiple occupation) of that Schedule; or
- (b) as two or more separate dwellinghouses falling within Class C4 (houses in multiple occupation) of that Schedule of any building previously used as a single dwellinghouse falling within Class C3 (dwellinghouses) of that Schedule.



- 7.3.5 According to the submitted details the development would not result in the use as two or more separate dwellinghouses falling within Class C4 (houses in multiple occupation) of any building previously used as a single dwellinghouse falling within Class C3 (dwellinghouses) and as such it does not conflict with Class L paragraph L.1(b).
- 7.3.6 According to the Interpretation of the Order: "dwellinghouse", except in Part 3 of Schedule 2 to this Order (changes of use), does not include a building containing one or more flats, or a flat contained within such a building.

#### **7.4 Criteria for an HMO**

- 7.4.1 Under the Town and Country Planning (Use Classes) Order 1987 (as amended), an HMO must meet the following characteristics, which will be assessed in turn.
- 7.4.2 **(i)** Consists of one or more units of living accommodation not consisting of a self-contained flat or flats: The submitted drawings show six separate bedrooms, all with their own private en-suite shower-rooms, but a shared kitchen on the first floor. As a result there are no self-contained flats.
- 7.4.3 **(ii)** The living accommodation is occupied by persons who do not form a single household: This has been confirmed by the applicant in a Statutory Declaration.
- 7.4.4 **(iii)** The living accommodation is occupied by those persons as their only or main residence: This has been confirmed by the applicant in a Statutory Declaration.
- 7.4.5 **(iv)** Their occupation of the living accommodation constitutes the only use of that accommodation: This has been confirmed by the applicant in a Statutory Declaration.
- 7.4.6 **(v)** Rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation: The tenancy agreements require the occupiers to pay rent. In addition, 3 tenancy deposit certificates have been provided showing a tenancy start date of 20 July 2022.
- 7.4.7 **(vi)** Two or more of the households who occupy the living accommodation share one or more basic amenities (being a toilet, personal washing facilities, or cooking facilities): The drawings do not show a kitchen anywhere other than on the first floor, so all of the occupiers must share those cooking facilities.
- 7.4.8 **(vii)** There are no more than 6 residents: This has been confirmed by the applicant in a Statutory Declaration.

## **7.5 The change of use has occurred**

- 7.5.1 The Council is mindful of the Government guidance that if it has no evidence itself, nor from any others, to contradict or otherwise make the Applicant's version of events less than probable, there would be no good reason to refuse the application.
- 7.5.2 The Council's evidence/information including Council Tax which have recorded the landlord as paying Council Tax for the property as an occupied house as they would for an HMO and Licensing records confirm that an HMO license was granted on the 18.08.2022. It is acknowledged that this this does not conclusively confirm that the property has been used as a Use Class C4 small HMO. The Applicant has provided evidence, comprising Assured Shorthold Tenancy Agreements for each of the tenants at that time, together with Tenancy deposit protection, rental agreements, letter from the builder, invoices for the building materials etc and a statutory declaration. The Statutory Declaration confirms that the property was converted and in use as an HMO from July 2022. The builders letter confirms that the property was converted from the 1st floor down, with the advice from the landlord that once the first floor works are completed they will be in a position to let the rooms on the first floor. The builder has confirmed that they completed the first floor 2 rooms and 1 communal kitchen on the first floor on the 12th July 2022. On the 17th July 2022 they completed the works for the room at the rear of the house. The works continued on the remaining rooms while 3 residents moved in on the first floor and into the rear room on the ground floor. They state that the building work was completed around 28<sup>th</sup> August 2022 and materials remained on site for approximately 1 week after this date.
- 7.5.3 It is noted that representations have been made stating that building materials and a skip were not removed until early September 2022, nevertheless this does not indicate what was happening inside the property and if the property had been converted and inhabited.
- 7.5.4 A timeline with photographs has been provided by neighbours. This states that emails were sent to Bromley council advising of out of hours/unsociable building works through July and August which disproves that the property was in occupation prior to 1<sup>st</sup> September. There are records held by the Council confirming that building works were underway in July. There are photographs dated 4 and 5<sup>th</sup> September showing two rooms were unoccupied with new furniture still wrapped. It is unclear from the information provided which rooms these were. Further photographs are showing that the skip to the front was removed around the 6<sup>th</sup> September and that blinds were only fitted to the property around the 9<sup>th</sup> September.
- 7.5.5 The local residents state that the first room to be occupied was bedroom 2 on the 11<sup>th</sup> September, followed by bedroom 3 on 16<sup>th</sup>/17<sup>th</sup> September.
- 7.5.6 There have been no photographs provided by any objector from the inside of the property from July, August or the beginning of September. Signed statements have been provided from 5 neighbours and a Ward Councillor

stating that to the “*best of their knowledge*” the property was not occupied as an HMO. However, no firm and conclusive evidence to contradict the evidence provided by the applicant has been provided to confirm that the first floor rooms were not occupied or one of the rear rooms at ground floor level. Whilst it may be accepted that blinds were only installed around 9<sup>th</sup> September this in itself is not conclusive evidence that there was not a person occupying the room or any of the first floor rooms.

7.5.7 Given the Applicant's information and the information/absence of information available to the Council, and on the balance of probabilities, it has been demonstrated that the property was in Use as a Use Class C4 small HMO prior to 1<sup>st</sup> September 2022.

7.5.8 Given that the Article 4 Direction prevents the change of Use from C3 dwellinghouse to C4 small HMO the provisions of Class L of the General Permitted Development Order 2015 (as amended) do not apply.

## **8 CONCLUSION**

8.1 According to the submitted details and the information/evidence available the property is in Use as a Use Class C4 small HMO, before 1 September 2022 and therefore before the Article 4 Direction preventing for the formation of Use Class C4 small HMOs came into effect, and it is recommended that an existing lawful development certificate is granted.

8.2 Background papers referred to during production of this report comprise all correspondence on the files set out in the Planning History section above, excluding exempt information.

### **RECOMMENDATION: Existing Use/Development is Lawful**

**On the balance of probabilities, the change of use to a small HMO within Class C4 took place prior to 1<sup>st</sup> September 2022 and was permitted by virtue of Class L(b) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).**