

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	251778
Site Address:	37 Shefford Crescent, Wokingham, Wokingham, RG40 1YP
Expiry Date:	24 September 2025
Site Visit Date:	26 August 2025
Proposal: Application for a certificate of existing lawful development for a change of use of the existing building to HMO (Use Class C4) under permitted development.	

PLANNING HISTORY

Application No.	Description	Decision & Date
251779	Application for a certificate of existing lawful development for the erection of single storey rear extension under permitted development.	Live application
B/17/71	Construction of 138 No. dwellings and garages together with all necessary estate roads and sewers.	Approved 16/09/1971

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate Application Form states that the change of use from Class C3 dwellinghouse to Class C4 House in multiple occupation is permitted development. Each room is let under single tenancy agreements. Tenants share the kitchen, bathrooms and communal living area.
- Plans.
- Photographs.
- Council Tax Bill 2020/21.
- Council Tax Bill 2021/22.
- Southeast Water Bill (dated 4 September 2023).
- Site Plan.
- Agency Property Management Agreement dated 25/11/2020.
- Assured Tenancy Agreement (A.N, 9th January 2021-9th July 2021).
- Assured Tenancy Agreement (R.S, 5th January 2021-5th July 2021).
- Assured Tenancy Agreement (S.N, 14th December 2020-14th June 2021).
- Assured Tenancy Agreement (K.P, 29th December 2020-29th June 2021).
- Assured Tenancy Agreement (J.P, 4th January 2021-4th July 2021).
- Assured Tenancy Agreement (C.E, 16th January 2021-16th July 2021).
- Wokingham Borough Council Notice of decision to grant a licence for a house in multiple occupation Letter (dated 19th August 2022).
- HMO Licence Certification HIU500 issued 19/08/2022.
- Change Of Use Planning Statement (dated 24th July 2025).

By the Council

- Planning Consent Decision Notice B/17/71.
- Building Regulations Application 20/2135/DEXBN – Domestic Extension Building Notice. Received 9th September 2020. Completed 6th August 2021.
- Planning History Records check.
- Planning Enforcement Records Check:
 - RFS/2020/085838 (Unauthorised building works and conversion to HMO) and associated documents which include:
 - Officer photographs (dated 29/09/2020).
 - Officer email to complainant to close the enforcement case as no breach as the change of use to a small HMO (Class C4) and single-storey rear extension were lawful under permitted development (dated 06/10/2020).
- The Case Officer carried out a site visit on 26/08/2025 and observed the nature of the use of the Land as shown in the submitted details.
- Site visit photos (26/08/2025).
- The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 3, Class L.

By third parties:

- None.

APPRAISAL

Town and Country Planning Act 1990 (as amended)

Section 55(1) of the Town and Country Planning Act 1990 (as amended) defines development as “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.”

Section 57 of The Town and Country Planning Act 1990 (as amended) requires that planning permission is required for the carrying out of any development of land.

Section 171B (1) states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of ten years (formerly four years) beginning with the date on which the operations were substantially completed.

Section 171B (3) states that in the case of any other breach of planning control, no enforcement action may be taken after the end of ten years beginning with the date of the breach.

Regarding the above, Section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 states that the amendments made to the 1990 Act by section 115 of the 2023 act (time limits for enforcement) do not apply where in respect of a breach referred to in section 171B(1), the operations were substantially completed before the day on which that section comes into force (25/04/2024). This means that

*where operational development has been carried out before 25/04/2024 **the four year rule still applies** (except where the operations has facilitated a material change of use).*

Section 191 deals with applications for Certificates of Lawfulness of existing development, and the authority's duty to determine them.

Section 191(1)(a) provides that if any person wishes to ascertain whether any existing use of a building or other land is lawful they may make an application for that purpose to the local planning authority specifying the land and describing the use, operations or other matter. As Section 191(1) (a) is written in the present tense, it is plain that the use must exist at the time of the application.

For the purpose of the 1990 Act s.191(2) defines operations as 'lawful' if:

(a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Case Law

The courts have held in *Gabbitts v Secretary of State for the Environment* [1985] JPL 630 that the relevant test of evidence on such matters is 'the balance of probability'. The Courts have also held that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted. If the Local Planning Authority has no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less probable, there is no good reason to refuse that application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

In considering applications for a Certificate the guidance given by the High Court in *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions* and *Vale of White Horse D.C.* [1999] JPL 461 is of value.

Three questions need to be answered. Firstly, "When did the material change of use specified in the application occur?" To be lawful, this would need to be before 1 July 1948, by 31 December 1963, or at a date at least 10 years prior to the current application, or 4 years for operational development or use of a building as a single dwelling.

Secondly, if the material change took place prior to those dates, has the use specified in the application been lost by operation of law in one of three possible ways, namely by abandonment, the formation of a new planning unit, or by way of a material change of use, be it by way of implementation of a further planning permission or otherwise.

Finally, if the decision maker is not satisfied that the description of the use as specified in the application properly describes the nature of the use, the decision maker must modify/substitute each description so as to properly describe the nature of the material change of use which occurred.

Relevant details of the proposal:

The change of use from a Class C3 Dwellinghouse to a Class C4 House in Multiple Occupation (HMO). The change of use does not have planning permission, and the lawful use is being sought under permitted development. The change of use occurred in January 2021.

To facilitate the change, a single-storey rear extension was constructed to enlarge 'Bedroom 2' on the ground floor which secured Building Regulations approval on 06/08/2021.

APPRAISAL

The application is for a Certificate of Lawful Existing Use to regularise the use of the property as a Class C4 HMO under permitted development. In determining a Certificate of Lawful Existing Use a Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. 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.

In the case of this Certificate, it must be demonstrated that the use as a Class C4 HMO meets the requirement of Schedule 2, Part 3, Class L of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Planning merits are not relevant at any stage in the process however evidence from third parties, including neighbours, can be obtained should the Local Planning Authority consider it necessary to do so.

The National Planning Policy Guidance (NPPG) sets out that the onus of proof is on the applicant, not the Local Planning Authority in submitting a Certificate of Lawfulness. However, the NPPG also states that "if Local Planning Authorities have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided that the applicant's evidence is clear and unambiguous to justify the grant of a certificate".

The Applicant's Evidence:

The evidence submitted includes a 'Notice of decision to grant a licence for a house in multiple occupation' letter from Wokingham Borough Council (dated 19/08/2022), which includes the granted HMO Licence (Licence Number: HIU500) and states:

The maximum number of occupants is: six

The maximum number of household is: six

The property is suitable for letting on individual tenancy agreements OR on a joint tenancy agreement.

Date of issue: 19th August 2022

Expiry date: 18th August 2027

Figure 1: Extract from HMO Licence

The Licence certifies that the property is licensed as a HMO, under the provisions of Part 2 of the Housing Act 2004 for a maximum number of six occupants.

The floorplans of the property are shown on page 6 of the Licence. The room layout shown on the Licence was corroborated by the Case Officer during the site visit on 26/08/2025 and are in accordance with submitted floorplans P1, P2 and P3.

In the case of this Certificate, the applicant must demonstrate the bedrooms are being let on a single occupancy basis. Page 2 on the six submitted tenancy agreements confirm that the total number of people permitted to occupy the property under each agreement is one, which would total a maximum number of six tenants occupying the property at any one time.

The Council's Evidence:

The case officer site visit (dated 26/08/2025) confirmed the position of the property as a Class C4 HMO and photographic evidence of each room was taken during the visit. The change of use of the property from a Class C3 dwellinghouse to a Class C4 HMO constitutes development and requires permission. Permission is available under Article 3 of The Town and Country Planning (General Permitted Development) Order 2015 (GPDO), the proposal being in accordance with Schedule 2 (Part 3) (Class L) of the Order:

Class L – small HMOs to dwellinghouses and vice versa

Permitted development

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.**

Development not permitted

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.**

Figure 2: Class L, Part 3, Schedule 2 GPDO

The development forms a dwellinghouse in use as one Class C4 HMO and compliant with Class L of the GPDO. The officer site visit and photographs confirm that there are six bedrooms (one with en-suite), three shared bathrooms, one utility room, one communal kitchen-dining room and shared garden.

The council's Building Control team (email dated 17/09/2025) and software system (Tascomi) confirm that the rear extension to 'Bedroom 2' gained Building Regulations approval on 06/08/2021. Application 20/2135/DEXBN for: 'Domestic Extension Building Notice'.

Enforcement case RFS/2020/085838 was raised on 14/09/2020 for 'Unauthorised building works and conversion to HMO' in relation to the application site.

Case documents include an email from the enforcement officer to the case complainant (dated 06/10/2020) to close the case providing the following reasons:

- *"The building works that are being carried out to the rear of the property do not represent a breach of planning control as the owner has Permitted Development Rights under 'The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)' to build a single storey rear extension within the limitations of the GPDO.*
- *Secondly, there is no material change of use to the house as the possible use of a HMO is allowed if under 6 occupants which I have been assured by the developer is the case. They are seeking a license from the Council but this is not a planning matter. If there is a material change of use then this is a planning matter but on my visit this was not the case".*

The information supports that the property has been in use as a Class C4 HMO since January 2021 under permitted development.

Conclusion:

The applicant's evidence is consistent and clear, and there is no other information which contradicts or undermines that applicant's version of events. The Council does not hold any information which contradicts the submitted evidence, not has any third-party information been received.

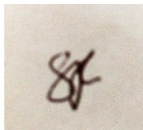
Based on the evidence above, it can be said on the balance of probability that the site as shown in the submitted details has been in use as a Class C4 HMO under permitted development from January 2021. In terms of planning, there is no requirement for the accommodation to secure planning permission for a change of use and the existing use of the Land is lawful.

The Public Sector Equality Duty (Equality Act 2010):

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

RECOMMENDATION

The relevant test for Lawful Use is the 'balance of probability'. Based on the evidence provided and the Local Planning Authority's own information, it is considered to have been demonstrated that the change of use of the C3 dwellinghouse to a Class C4 HMO is lawful under permitted development, the change being in accordance with Schedule 2, Part3, Class L of The Town and Country Planning (General Permitted Development) Order 2015 (as amended). It is therefore considered that the application of a certificate of existing lawful use should be approved, and a draft certificate is set out below.

Date:	17 September 2025
Earliest date for decision:	21 August 2025
Recommendation agreed by: (Authorised Officer)	
Date:	18.9.25