



Appeal Decision

Site visit made on 14 July 2026

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2026

Appeal Ref: APP/Y1110/X/24/3352280

42 Sylvan Road, Exeter, EX4 6EY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr David Paull against the decision of Exeter City Council.
 - The application ref 24/0558/LPD, dated 22 May 2024, was refused by notice dated 2 August 2024.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended) ('the Act').
 - The use for which a certificate of lawful use or development is sought is Change of use from House in Multiple Occupation for seven residents to eight residents.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Applications for costs

2. An application for costs was made by David Paull against Exeter City Council. This is the subject of another decision.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue a certificate was well-founded.

Reasons

4. S192(1)(a) of the Act provides for the making of an application to ascertain whether any proposed use of buildings or other land would be lawful. Amongst other things, s195 of the Act allows for an appeal to be made where a Council refuses an application under s192. In such an appeal, the onus lies with the Appellant to make his case on the balance of probabilities. This is an appeal that deals solely with the lawfulness of the development. Therefore, the planning merits of the use and planning policy relating to these play no part in my decision.
5. 42 Sylvan Road ('No 42') is a semi-detached dwelling in a street that is overwhelmingly residential. In the vicinity of the appeal site all of the other properties appeared to be single dwellinghouses. Externally, No 42 has a small front garden that has been gravelled, in which refuse and recycling bins were situated when I visited; there is a drive to one side on which 2-3 cars might be parked running to a single storey element of the building; and, to its rear, a quite large garden.

6. Internally, it has 7 rooms being used as bedrooms with another proposed to be used as a bedroom, two bathrooms, a shower room and two separate WCs, a utility room and a kitchen with communal area.
7. In 2021, the Council issued a certificate of proposed lawful use (its reference 21/1057/LPD) for the use of the property as a small HMO (C4 use).
8. The Council subsequently issued another certificate of proposed development, its reference 22/0351/LPD, for the conversion of an existing garage into habitable accommodation. The garage was in the single storey element to the rear of the drive that I refer to, above; it had been converted at the time of my site visit and it is within this that the room proposed to be used as a bedroom by the eighth person lies.
9. A further certificate of proposed development was issued by the Council for application 22/0821/LPD, for the proposed change of use from small HMO (Use Class C4) to a large HMO (Sui Generis) for 7 residents.
10. The Council's Officer report into the application states that the assessment as to whether there would be a material change of use should begin with the character of the activities from what has gone on previously. It does make reference, in its Statement of Case ('SoC') to the situation in 2021 when the property was advertised for sale, but I do not read this as an argument that this is the baseline for my assessment. The present lawful use of the property is that from the point of the decision on application 22/0821/LPD. This is the baseline from which an assessment as to whether or not the proposal would result in a material change in the character of the land that would represent a material change of use ('mcu') that would not be lawful.
11. Both parties' cases are brief. The Appellant asserts that there would be no change to the character of the property or the area by reason of one additional person living at No 42. He acknowledges that there would be some marginal increase in comings and goings, including deliveries, and in waste generated at the property, but none of this would be material.
12. The Council's position is that increasing the number of occupants at the property from 7 to 8 would result in the intensification of the residential use to one that would be materially different. In its Statement of Case ('SoC') it argues that the change in the number of bedrooms would be a contributory factor in this. It also points to the comments from third party residents of the area.
13. Those third parties say that any increase in numbers would have a negative impact on the area, being detrimental to local amenity and increasing parking problems. I am told by them and the Council that this was a three-bedroom house recently and that this would result in nearly a threefold increase in the number of bedrooms. The Appellant's incremental approach that has resulted in an increase in numbers must, at some point, result in a material change of use; the third party that wrote this is of the view that this was the case before, but definitely is now.
14. Both main parties refer to a number of appeal decisions¹ addressing similar proposals in the city. I have read these and note that they reach differing conclusions on whether one additional person in a property would amount to a

¹ APP/Y1110/W/20/3265339 - 3 Longbrook Terrace, Exeter; APP/Y1110/X/22/3293554 - 42 Hoopern Street, Exeter; APP/Y1100/X/22/3299539 - 13 Devonshire Place, Exeter; and APP/Y1110/X/23/3316675 - 6 Gladstone Road, Exeter

material change of use. The overriding conclusion to be drawn from them, as is acknowledged by both main parties, is that each case will turn on its individual circumstances.

15. The Officer report makes reference to another appeal at 42 Hoopern Street for a certificate of lawfulness, which was dismissed. I was not given a copy of this decision, nor was I given its reference number, but as it has not been challenged by the Appellant, I take what is said to be the case. From what I am told, that case related to an increase by a single occupant. However, it involved the sub-division of a bedroom to accommodate the extra person. That, to my mind, differs from the situation here where no such works are required, as an existing room created in the light of the Council issuing a certificate of lawful development is to be used.
16. As there is one additional person, it is axiomatic that there will be additional comings and goings with associated noise and disturbance. I find that a single additional person would make little difference in this regard. I find similarly in terms of deliveries to the property. It is unlikely that a single person would generate many deliveries. From my experience, it is unlikely that delivery vans would be making deliveries to the new occupant alone and would, in any event, be visiting other properties. Given the ubiquity of home deliveries, even on occasions where there were deliveries solely to the eighth occupant this would have an insignificant effect on the character of the property or the area.
17. The Council points to an effect of increasing numbers of people in HMOs being overflowing waste bins. In correspondence with the Council at the application stage, a third party did say that the density was too high for supporting infrastructure, "particularly in terms of...waste", but did not point to there having been any problem with 7 people. My view is that the addition of waste from one more occupant would not have a material effect on waste generation, storage and disposal at the property.
18. Both parties refer to parking matters in their submissions. The Council and third parties simply say that existing problems in the area would be exacerbated but provide no details of those problems, nor the effect of an additional occupant at No 42. I saw that there is a residents' parking scheme in operation on Sylvan Road, but no party has provided details of this. All I have is a statement from the Appellant that says that a further resident would not qualify for a parking permit so would not result in any increase on parking in the area.
19. I can understand third-party comments regarding their concerns about the seeming incremental increase in occupants of No 42. However, given: the baseline position; and that there are no new physical works required to facilitate the increase the number of occupants, I find that there would be no material alteration to the character of the property that would indicate that a material change of use would occur.
20. The parties' comments are largely generalised, and do not provide much in the way of detail to substantiate their cases. It is for the Appellant to make its case and as a matter of fact and degree, including the evidence of my site visit, on balance he does so.

Conclusion

21. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Change of use from House in Multiple Occupation for seven residents to eight residents is not well founded. The appeal should succeed, and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

R Curnow

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 22 May 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The evidence submitted proves as a matter of fact and degree that, on the balance of probability, the proposed use of the property would be lawful.

Signed

R Curnow

Inspector

Date: 28 August 2026

Reference: APP/Y1110/X/24/3352280

First Schedule

Change of use from House in Multiple Occupation for seven residents to eight residents

Second Schedule

Land at 42 Sylvan Road, Exeter, EX4 6EY

IMPORTANT NOTES – SEE OVER

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 and identified on the attached plan. 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 28 August 2026

by R Curnow

Land at: 42 Sylvan Road, Exeter, EX4 6EY

Reference: APP/Y1110/X/24/3352280

Scale: Not to Scale

