



Section 192 Town and Country Planning Act

Proof of Evidence

Occupation of existing 6-bedroom, 6-person House in Multiple Occupation (Class C4) to a 7-bedroom, 7-person House in Multiple Occupation (Sui Generis)

14 Willow Tree Lane, Hayes, UB4 9BB





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Site Information

Consultant	Joseph Orbell
Client	SB Property Power
Site Address	14 Willow Tree Lane, Hayes, UB4 9BB
LA	Hillingdon
Description of Development	Occupation of existing 6-bedroom, 6-person House in Multiple Occupation (Class C4) to a 7-bedroom, 7-person House in Multiple Occupation (Sui Generis)
Pathway (PD/Application/Appeal)	CLU (Proposed)

Constraints Review

Flood Risk Zone	1
Contaminated Land	No
Tree Preservation Order	No
Heritage Assets	No
Noise Abatement Areas	No
Explosive Hazard Areas	No
Area of Outstanding Natural Beauty	No
Special Protection Area	No
Site of Special Scientific Interest	No
RAMSAR Convention Site	No
Site of Importance to Nature Conservation	No
Article 4(1) Directions	C3-C4



Planning History

Relevant History

Change of use from Class C3 dwelling house to 7-bedroom / maximum 8 person HMO Use Class Sui Generis
Ref: 5516/APP/2025/2441 | Refusal

Change of use from a Dwellinghouse (Class C3) to a House in Multiple Occupation (Class C4) (Application for a Certificate of Lawful Development for a Proposed Use).
Ref: 5516/APP/2025/2218 | Refusal

Change of use from C3 dwelling house to 8 bedroom / maximum 8 person HMO Use Class Sui Generis
Ref: 5516/APP/2025/1725 | Refusal

Change of use from Class C3 (Dwelling) to an 8 bedroom Sui Generis (Large HMO).
Ref: 5516/APP/2025/686 | Refusal

Erection of a first floor side extension over existing garage. Conversion of integral garage to habitable accommodation and amendments to fenestration.
Ref: 5516/APP/2025/3 | Approval

Erection of a first floor side extension
Ref: 5516/K/96/0852 | Refused

Erection of a single storey rear extension
Ref: 5516/J/89/0980 | Approval

Report Date

17th December 2025

1. Introduction

1.1. The site, the subject of this certificate, relates to No.14 Willow Tree Lane which is a two-storey semi-detached building with a side addition and loft conversion providing accommodation over 2 storeys with a room in the roof.

1.2. The site was lawfully converted to a C4 HMO prior to the implementation of an immediate article 4 and confirmed by certificate 5516/APP/2025/2218.

1.3. The existing accommodation is set out within the existing drawings and provides for:

Ground floor: Two en-suite bedrooms, kitchen/lounge and office/study room

First floor: Four en-suite bedrooms and kitchenette.

1.4. No building works are required to facilitate the change of use from a 6 Person HMO (Class C4) to a 7 Person HMO (Sui-Generis).

Matters Pursuant to the application

1.4. The HMO had established its lawful use as a 6-bedroom C4 HMO prior to the recent implementation of the article 4 as was confirmed by certificate 5516/APP/2025/2218.

Summation of Case

1.5. The property has lawful use following the aforementioned certificate and is being used as a 6-person HMO (C4). This proposal is to use two of the bedrooms to provide double occupancy and therefore there is no physical internal or external development involved.

1.6. The property has recently been renovated to a high standard for use as the HMO. The residents are now provided with high quality accommodation and significant amenity space with a large kitchen/dining area and a spacious rear garden.

1.7. The addition of a **7th person to a 6 person HMO is not development and will not lead to a material increase in activity** that will have an impact on neighbouring occupiers. This is not



development under the definitions within S55(1) of the Town and Country Planning Act 1990 and as such does not require planning permission and the applicant now seeks confirmation of this through a Certificate of Lawful Use.

2. Site Context

2.1. The site is in a road of semi-detached and terraced dwellings mostly in use within Class C3 with some Class E units to the sites west.

2.2. The site is within a public transport connectivity score area of 81/100 indicating the site is in a highly sustainable and well-connected area.

2.3. The site is not listed nor in a conservation area.

3. Legislative Context

Town and Country Planning Act 1990

3.1. S55(1) of the Town and Country Planning Act provides the legal definition of development that is subject to planning control and states:

55 Meaning of “development” and “new development”.

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means 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.

F1 [(1A) For the purposes of this Act “ building operations ” includes—

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.]

3.2. S55 (2)(a) sets out the exemptions to the broad brush approach in S55(1) and states:



(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

(i) **affect only the interior of the building, or**

(ii) do not materially affect the external appearance of the building, and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;

Relevant Caselaw

3.4. Matters of intensification have been the subject to challenges within the High Court and Court of Appeal and the key judgements on these decisions are:

R (Lyons) v Secretary of State for Communities and Local Government (2010)
Childs v First Secretary of State and Test Valley Borough Council (2005),
Reed vs Secretary of State for Communities and Local Government (2014)
I'm Your Man case (I'm Your Man Ltd v Secretary of State for the Environment, Transport and the Regions (1998)

3.5. I shall address these cases within my proof of evidence which follows.

4. Proof of Evidence

4.1. There are 2 questions that lay at the heart of this application for a Certificate of Lawfulness. I shall address each in turn.

Whether the internal works are development requiring planning permission.

4.2. S55(2) of the Town and Country Planning Act 1990 as shown above states that internal works that do not alter the building's exterior do not qualify as 'development' requiring planning permission. The submitted plans show that no proposed physical works are required and changes are limited to making more effective use of the space within by reallocating the study's

to bedrooms. As such, the addition of one person is lawful under the provisions of S55(2)(a)(i) of the Town and Country Planning Act 1990.

Whether the increase in the number of persons results in a material change of use.

4.3. The LPA is reminded that the property benefits from an unfettered approval for up to 6 persons under Class C4.

4.4. Para 17 of Annex A of Circular 08/2010 states:

*“Although the control limit of six persons defines the scope of the C3 (b) and (c) dwellinghouses and C4 houses in multiple occupation classes, this does not imply that any excess of that number must constitute a breach of planning control. **A material change of use will occur only where the total number of residents has increased to the point where it can be said that the use has intensified so as to become of a different character or the residents in relation to C3 no longer constitute a single household.**”*

4.5. It is therefore clear that the addition of a person is not a material change of use.

Key case law and legal precedents

Childs v First Secretary of State and Test Valley Borough Council (2005),

4.6 The Child's case concerned a site with a lawful use certificate for four residential caravans. The applicant was refused certificates for eight, 15, 30 and 50 caravans. The High Court held that the extent to which intensification constitutes a material change is a matter of fact and degree, to be considered in light of the character of the use. In this case, the judge decided that the degree of change in the nature of the use would be material and planning permission would be required.

R (Lyons) v Secretary of State for Communities and Local Government (2010)

4.7 In the same way, the Lyons case considered the nature and degree to which intensification affected the character of the land in question. The claimant sought to quash an inspector's decision upholding an enforcement notice requiring a reduction in aircraft numbers at Damyns Hall Aerodrome in east London. In March 2007, a lawful use certificate had been issued for the

site that limited the number of aircraft to 15. In April 2009 the number of aircraft present on the site totalled 41.

4.8 The appellant argued that the inspector had failed to give adequate reasons for concluding that intensification of the aerodrome use had changed its character. The inspector followed the process set out in Childs, taking the certificate figure as his starting point. **Applying common sense, he accepted that a breach of this figure by one or two aircraft would not amount to a material change.** However, he felt that the impact on green belt openness and the visual harm caused by 26 extra aircraft resulted in a material change in the character of the use.

Reed v The Secretary of State for Communities and Local Government & Anor (2014)

4.9. In Reed this case turned on the whether the intensification of and change of use of the land from agricultural to use for the stationing of two number static mobile homes, touring caravans for residential use, one number storage container, and one number mobile utility block.

4.10. The inspector found that there was a mixed use on the site and one element of the mixed use, namely the use for equestrian purposes, had remained unchanged. The only change was from one static and one touring caravan, to two static mobile homes, touring caravans, and a storage container; the storage container was used as a day room and domestic storage for Mr Hume, who was the occupant of the second mobile home.

4.11. The Inspector's answer to the Ground C Appeal was "However, the additional caravan amounts to a doubling of the number of residential caravans permitted on the land and I am satisfied on a fact and degree basis that the alleged material change of use has occurred. Therefore, the matters alleged in the corrected notice constitute a breach of planning control and the appeal on ground C fails."

4.12. The Appellant concluded that the inspector had either a) applied the wrong test and assumed that "mere intensification" amounted to a change of use even if it did not change the character of the mixed equestrian/residential caravan site use of the land, or b) if the inspector had considered whether there had been a change not merely in the number of caravans on the land but in the character of the mixed use, then he did not give any, or any adequate reasons for concluding that there had been a change in character.

4.13. The judge dealt with this ground of challenge in paragraphs 80 to 92 of his judgement, which is reported at [2013] EWHC 787 (Admin). In paragraphs 87 to 90 the judge said this:

"87) Put in these terms, the appellant's submission on ground 2 does have a technical and somewhat unattractive quality. The appellant does not and cannot submit that erecting two caravans rather than one could not constitute a material change of use as a matter of law.

88) The inspector did not have regard to the size or location of the caravan for this purpose (that would have been impermissible) he merely had regard to number.

89) I accept Mr Greatorex's submission that materiality is a matter of judgement for the inspector. The inspector after all rejected the section 142(2)(a) appeal, from which it may be inferred that the number of caravans was relevant to the issue of whether planning permission ought to have been granted.

90) I do not accept Mr Rudd's submission that he can draw solace from the decision of the Court of Appeal in *Hertfordshire County Council v Secretary of State* ... the facts there were somewhat different. There was one and the same scrap yard with a significantly increased level of throughput. Here we have two caravans rather than one."

4.13. The judgement continued:

When he was considering the ground C appeal the inspector had to correctly direct himself as to the test to be applied if he was to conclude that an increase in the number of caravans on the site had been such as to amount to a material change of use. **The inspector, as I have mentioned, did not refer to intensification in the decision. That would not necessarily have been fatal if it had been plain from the decision that he had correctly directed himself, but the inspector did not expressly conclude that there had been a change in the character of the mixed use.** On the face of the decision, the character of the mixed use remained the same for equestrian purposes and as a caravan site for gypsies.

If the inspector did consider whether there had been a change in the character of the mixed use on the site, **then it would seem that the sole basis on which he concluded that there had been a material change of use was the simple fact that the additional caravan amounted to a "doubling of the number of caravans". A caravan site with four caravans rather than two caravans upon it still has the character of a caravan site, that is the very reason for the imposition of conditions relating to the numbers of caravans such as were imposed on the 2007 permission granted on appeal. Thus, the only express reasoning in the decision is consistent with the inspector having adopted an erroneous approach: that "mere intensification" could amount to a material change of use.**

4.14. For these reasons, whether one focuses on the judge's reasoning or on the inspector's reasoning in paragraph 31 of the decision, there is no doubt that the inspector did apply the wrong test, namely a mere intensification test, and that was the reasoning for allowing the appeal in this case.

I'm Your Man case (I'm Your Man Ltd v Secretary of State for the Environment, Transport and the Regions (1998)

4.15. The I'm Your Man case (I'm Your Man Ltd v Secretary of State for the Environment, Transport and the Regions) established the principle that where planning permission is granted for a certain use, any limitation on the way that use is exercised must be imposed by express condition, not just in the description of the development.

4.16. The background to this case was that planning permission had been granted in 1995 for "additional use of warehouse/factory for sales, exhibitions and leisure activities for a temporary period of seven years in accordance with the terms of the application." However, no condition was imposed by the local authority requiring the planning permission to be brought to an end after the seven years.

4.17. In 1997 the owner then applied for permanent use of the premises for the same purposes. The Court of Appeal allowed the application as any limitation should have been imposed by express condition, not merely in the description of the development. Additionally, the court held that the change from a seven year use to a permanent use was not sufficient to amount to a 'material change of use.'

4.18. The principles laid down in I'm Your Man have now been examined and reaffirmed in Winchester City Council v Secretary of State for Communities and Local Government and others [2015] EWCA Civ 563.

Other relevant consents

4.19. On the 20th September 2024 a Certificate of Lawful Proposed use was issued for a very similar proposal at 10 The Crescent within Sutton (DM2024/00968). This proposal consisted of no physical alterations and only the change of occupation from 6-persons to 7-persons alike this proposal.

4.20. While precedent does not exist within planning, this certificate shows how a London Planning Authority agrees that the addition of a person to an existing 6-person HMO is not a material change of use by fact and degree when the nature of the application property and residential character of the area allow.

4.21. This application takes this now established principle and applies it within the same context to a building with increased amenity space and larger room sizes for the proposed occupiers, therefore meaning that any impacts of an additional person is reduced.

4.22. The surrounding residential area is not over saturated with HMOs nor would the addition of 1 person change this.

4.23. As such it is submitted that this application for an increase of 1 person is also not a material change of use by fact and degree.

5.0. Application to the case

5.1. When applying the above principles to the case in point we must discount any argument of pure intensification alone and focus on whether the addition of a person to an otherwise unfettered Class C4 HMO results in a material change of use.

5.2. In respect of the outward appearance and character of the proposed use the development would seek the addition of 1 person via the re-use of an existing office/study. The works to do this are not development as discussed above and were the rooms used for any other purpose there would be no discussion to be had on whether there is or is not a material change of use. The works in themselves do not change the nature or character of the use or indeed affect its designation as an existing large HMO. In essence the HMO use will remain as such with the works in place.

5.3. Fundamentally, applying the principles as set out above the character of the building would remain as an HMO, there would be no detectable intensification of the building that would result in a material change of use and as such the proposal does not result in development as set out within S55(1) of the Town and Country Planning Act as the addition of 1 bedroom and 1 person to this building would not result in a material change of use by fact or degree.



5.4. To support this assertion the applicant supplies the following appeal decisions and previously granted Certificate of Lawful use:

Appeal Ref APP/Z1775/C/20/3245106, APP/Z1775/C/20/3246078, APP/Z1775/C/20/3245110, APP/Z1775/C/20/3246079, APP/Z1775/C/20/3245108, APP/Z1775/C/20/3246077, APP/Z1775/C/19/3233187, APP/Z1775/C/19/3236610, APP/Z1775/C/19/3234941, APP/Z1775/C/19/3266831, APP/Z1775/C/19/3238003, APP/Z1775/C/19/3238287 - Campbell Properties Portsmouth

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

Appeal Ref: APP/W5780/W/20/3263096 - 164 Kingston Road, Ilford IG1 1PE

Appeal Ref: APP/Z1775/W/22/3302601, APP/Z1775/W/22/3303724 and APP/Z1775/W/22/3303194 - The Lane Properties - Southsea

Appeal Ref: APP/Z1775/C/23/3327364
127 Powerscourt Road, Portsmouth PO2 7JQ

Certificate of Lawful Use, DM2024/00968
10 The Crescent, Sutton, SM1 4HU

5.5. In all of the above cases the Inspectorate or LPA applied the case law as set out above and concluded that planning permission was not required in each instance.

5.6. Taking everything into consideration it is submitted that the proposal would not, by fact and degree, result in a material change of use and would therefore not exceed the provisions of S55(1) of the Town and Country Planning Act (1990). Given this planning permission is not required.

