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Section 192 of the Town and Country Planning Act 1990

Planning Statement

**To accompany an application for a
Lawful Development Certificate for the
Proposed**

**“Erection of a side extension; rear extension; and the change of use to
a small HMO (C4)”**

At

**50 Thornton Avenue,
West Drayton UB7 9JX**

By

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Introduction

1. This is an application for a Lawful Development Certificate under Section 192 of the Town and Country Planning Act 1990 for the operations proposed to be carried out on land at 50 Thornton Avenue, West Drayton UB7 9JX.
2. The proposal is lawful pursuant to Class A of Part 1 and Class L of Part 3 of Schedule 2 to the GPDO which allow for *the enlargement, improvement or other alteration of a dwellinghouse*, and for change of use of *small HMOs to dwellinghouses and vice versa*.
3. Section 192 of the Town and Country Planning Act 1990 provides that,
 - (1) *If any person wishes to ascertain whether—
 - (a) any proposed use of buildings or other land; or
 - (b) any operations proposed to be carried out in, on, over or under land,would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.*
 - (2) *If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.*
 - (3) *A certificate under this section shall—
 - (a) specify the land to which it relates;
 - (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
 - (c) give the reasons for determining the use or operations to be lawful; and
 - (d) specify the date of the application for the certificate.*

(4)The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

The land

4. The land is at 50 Thornton Avenue, West Drayton UB7 9JX.
5. The site is a two storey semi-detached single dwellinghouse house sitting at an angle on the corner of Thornton road with North road.
6. There are two rooms at ground floor level and two rooms at first floor level.
7. The site is not located within a Conservation Area nor is it a Statutory Listed Building.



The Development

8. The application relates to the proposed Erection of a side extension; rear extension; and the change of use to a small HMO (use Class C4).

The reasons for determining the development to be lawful

9. The Town and Country Planning Act 1990, Section 60 - Permission granted by development order, states,

(1) Planning permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.

10. The Town and Country Planning (General Permitted Development) (England) Order 2015 is such an Order.

Article 3 of the 2015 Order provides inter alia that:

“(1) Subject to the provisions of this Order....., planning permission is hereby granted for the classes of development described as permitted development in Schedule 2 .

(2) Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2 .”

11. Planning permission is granted under Class A in Part 1 of Schedule 2 of the GPDO for “enlargement, improvement or other alteration of a dwellinghouse”. However, by virtue of condition A.1, such development is not permitted inter alia if-

(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);

(b) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

(c) the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;

(d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;

(e) the enlarged part of the dwellinghouse would extend beyond a wall which—

(i) forms the principal elevation of the original dwellinghouse; or

(ii) fronts a highway and forms a side elevation of the original dwellinghouse;

(j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would—

(i) exceed 4 metres in height,

(ii) have more than a single storey, or

(iii) have a width greater than half the width of the original dwellinghouse;

12. PART 3 'Changes of use' of The Town and Country Planning (General Permitted Development) (England) Order 2015, Class L – small HMOs to dwellinghouses and vice versa, permits,

"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."

13. C4 of the Use Class Order refers to the definition of HMO as defined at s.254 of the Housing Act 2004 save for those HMO's the subject of s257 of that Act. It states,

"Class C4. Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

Interpretation of Class C4

For the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004."

14. It is, therefore, necessary to turn to the Housing Act 2004 to understand what a C4 HMO is and consequently, what is allowed by Class L of the GPDO. It shall be noted that the TCPA provides no definition of an HMO.

15. Section 254 of the Housing Act 2004 states (as far as relevant with emphasis added)

“a building or a part of a building is a “house in multiple occupation” if—

- (a) it meets the conditions in subsection (2) (“the standard test”);**
- (b) it meets the conditions in subsection (3) (“the self-contained flat test”);**
- (c) it meets the conditions in subsection (4) (“the converted building test”);
- (d) an HMO declaration is in force in respect of it under section 255; or
- (e) it is a converted block of flats to which section 257 applies.**

16. At subsection (2) it states;

“(2) A building or a part of a building meets the standard test if—

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
- (c)
- (d)
- (e); and
- (f) two or more of the households who occupy the living accommodation share one or more basic amenities **or the living accommodation is lacking in one or more basic amenities.**

17. At subsection (3) it states;

(3) A part of a building meets the self-contained flat test if—

- (a) it consists of a self-contained flat; and
- (b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

18. At subsection (8) it states;

(8) In this section—

- **“basic amenities” means—**
 - (a) a toilet,**
 - (b) personal washing facilities, or**
 - (c) cooking facilities;**

“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“enactment”

“self-contained flat” means a separate **set of premises** (whether or not on the same floor)—

- (a) which forms part of a building;
- (b) either the whole or a material part of which lies above or below some other part of the building; and
- (c) **in which all three basic amenities are available for the exclusive use of its occupants.**

19. Therefore, if the rooms within the property do not provide all three basic amenities, the property is within Use Class C4, and the change of use from a single dwellinghouse to such a use would be permitted development. In this case, the rooms will not have all the three basic amenities. All tenants will share the cooking facilities.

20. The **Government Permitted development rights for householders** **Technical Guidance** states.

The extent to which an elevation of a house fronts a highway will depend on factors such as:

- (i) the angle between the elevation of the house and the highway. If that angle is more than 45 degrees, then the elevation will not normally be considered as fronting a highway;*
- (ii) the distance between the house and the highway - in cases where that distance is substantial, it is unlikely that a building can be said to front the highway. The same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the house concerned and the highway.*

21. In this case, the property sits far from the road and has an angle larger than 45 degrees.

Date of the application for the certificate

22. This application is made on 02 February 2023.

Conclusion

23. This application provides information that satisfies the claim that the matters described in the application are lawful at the time of the application.