



# **Planning Statement**

**Certificate of Lawfulness for  
Existing Use**

**19 Greatfields Drive  
Hillingdon UB8 3QN**

**March 2025**

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# Chapter 1

## Introduction

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# 1. Introduction

- 1.1. This statement has been prepared by WEA Planning to support the application for a certificate of lawfulness for existing use under Section 191 of the Town and Country Planning Act 1990 (as amended) (TCPA 1990) for the use of the dwellinghouse at number 19 Greatfields Drive, Uxbridge UB8 3QN as a House of Multiple Occupation (HMO) for up to six individuals under Use Class C4.
- 1.2. This statement sets out the background to the development including relevant planning history, and the legislation relevant to the determination of the application to demonstrate that the development is lawful, given the evidence provided.
- 1.3. The Appendices as listed in this statement have been submitted as separate documents and are redacted for confidentiality purposes.

## **Site Description**

- 1.4. The application site is situated within the London Borough of Hillingdon at 19 Greatfields Drive, Uxbridge UB8 3QN.
- 1.5. The subject site constitutes a three-storey terraced house on Greatfields Drive. The surrounding uses are predominantly residential. The site does not contain a listed building and is not located within a conservation area.

## **Relevant Planning History**

- 1.6. The LPA's online planning register shows a limited planning history at the property, as listed below.
- 1.7. 78697/APP/2024/1632 19 GREATFIELDS DRIVE HILLINGDON  
Change of use from single dwelling house (Use Class C3) to House in Multiple Occupation (HMO) for up to 5 residents (Use Class C4) (Application for a Certificate of Lawful Development for an Existing Development)  
Refused 02-09-24

- 1.8. 78697/APP/2024/870 19 GREATFIELDS DRIVE HILLINGDON  
Change of use from single dwelling house (Class C3) to HMO for up to 5 residents (Class C4) (Application for a Certificate of Lawful Development for an Existing Development)  
Refused 13-06-24
- 1.9. The above certificates of existing lawful use were refused on the basis that the evidence submitted was insufficient to prove, on the balance of probabilities, that the C4 HMO use of the property has been continuous for at least ten years prior to the date of the application. This revised application adds additional evidence and statements to corroborate the HMO history of the property.
- 1.10. It is also relevant to note the history of the neighbouring house at number 20 Greatfields Drive. The situation at that house has been practically identical to that at number 19, having been in the same ownership and rented as an HMO for many years. This has recently been established as lawful under application ref. 78711/APP/2024/3021 for which a Certificate of Lawfulness was issued on 17<sup>th</sup> January 2025.

### **The Existing Use**

- 1.11. The existing use is as an HMO under Use Class C4. This use has existed continuously for a period in excess of 10 years. It is also relevant to consider that the C4 use of the property commenced prior to the introduction of the Article 4 Direction on 24<sup>th</sup> March 2013 which restricts permitted development rights for change of use from C3 to C4. On that basis, the test then becomes about abandonment rather than continuity, and we note that these are different and distinct tests and this has been considered in various case law which is discussed in the Legislative Context section of this statement.
- 1.12. The main consideration for this application is the adequacy of the evidence, which illustrates the clear position that, on the balance of probabilities, the property has been used as an HMO and has remained continuously in use as such for a period exceeding 10 years, and also that the use commenced prior to the introduction of the Article 4 Direction and has not since been abandoned. Contrary to the LPA's previous assessment and based on additional evidence

presented with this application, the existing status of the property can be seen to be entirely lawful, and a certificate should therefore be granted. The evidence is discussed later in this statement.

### **Legislative Context**

- 1.13. The Town and Country Planning Act 1990 (as amended) (TCPA) sets out the following under Section 191:

*(1) If any person wishes to ascertain whether—*

*(a) any existing use of buildings or other land is lawful;*

*[...] he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.*

*(2) For the purposes of this Act uses and operations are lawful at any time if—*

*(a) no enforcement action may then 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)*

- 1.14. Section 171B of the TCPA sets out the relevant time limits. Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Likewise, in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

- 1.15. I note the recent legislative changes to section 171B of the Town and Country Planning Act 1990 (TCPA) mean that from 25th April 2024, the period for immunity from enforcement action was extended from 4 years to 10 years, in the case of the change of use of any building to use as a single dwellinghouse. However, transitional provisions are provided under Part 3(5) of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024. This means that given the change of use occurred and was completed before the amendments to Section 171B came into force, as the submitted evidence proves, then 4 years is the relevant period for consideration.

## **Use Class C4 and Permitted Development Rights**

- 1.16. Until April 2010, the Use Class Order (The Town and Country Planning [Use Classes] Order 1987 [as amended]) did not include any specific classification covering HMOs. Up until that time, shared properties with up to six occupiers were generally not distinguished from residential properties in family/single occupancy use and fell within the C3 Dwelling houses classification.
- 1.17. In 2010 a new Use Class was introduced - C4 (houses in multiple occupation) under The Town and Country Planning Act (Use Classes) (Amendment) Order 2010 (SI 2010/653).
- 1.18. Additionally, under The Town & Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2010 (SI 2010 No. 2134), Permitted Development rights were granted for a change of use from C3 to C4. Article 3 of The General Permitted Development Order (GPDO) grants permission for a range of developments set out in Schedule 2 of the GPDO, so that development which falls within Schedule 2 can be carried out without applying to the LPA for express permission (providing it meets any conditions set out in Schedule 2). Class L of Schedule 2 provides rights for change of use from small HMOs to dwellinghouses and vice versa.
- 1.19. Article 4 of the GPDO gives councils the power to make Directions which withdraw Permitted Development Rights. Following such a Direction, planning permission would then be necessary for development to which the Article 4 Direction relates. However, an Article 4 Direction cannot take effect retrospectively.
- 1.20. Furthermore, an Article 4 Direction came into force in Hillingdon on 24<sup>th</sup> March 2013 which restricted permitted development rights for change of use from C3 to C4 in certain zones, including at the Property.
- 1.21. Prior to the introduction of this Article 4 Direction, such a change of use would have been lawful. If the use had not since been abandoned, then this use would have remained lawful. It is important to note that the test for 4/10-years continuity is a distinct test to that for abandonment of a use.



- 1.22. Therefore, regardless of the applicability of the 4-year or 10-year rule, the primary question for this application is 'did the change of use happen lawfully' (i.e. prior to the Article 4 Direction) and if so, whether that lawful use was not since abandoned.
- 1.23. There are several examples of appeals and case law which highlight the implications for decision making. For example, *Panton and Farmer v. SSETR* [1999] JPL 46, and *SSETR v. Thurrock BC* [2002] EWCA Civ 226. The *Panton* case sets out the key considerations for a decision. Firstly, when did the use commence and at what point would it have become lawful.
- 1.24. The second question would therefore be whether the lawful use been lost through abandonment. The *Panton* case was considered by the *SSETR v Thurrock BC* case where the Court of Appeal held that the question of the use being lost by abandonment becomes relevant when a use was already lawful.
- 1.25. Regarding abandonment of a use, I refer to the leading cases which established the tests for abandonment. *Hartley v Minister of Housing and Local Government* (1970) QB 413 established that whilst mere cessation of a use is not in itself development, the inference may be drawn that the use has been abandoned if it ceased with no intention that it should be resumed. In that case, Lord Denning MR suggested that the test of abandonment should be based on the drawing of inferences from the fact of land having 'remained unused for a considerable period of time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned'.
- 1.26. In *The Trustees of Castell-y-Mynach Estate v Taff-Ely BC* (1985), the Court established four criteria for assessing whether a use had been abandoned. These are: (1) the physical condition of the buildings; (2) the period of non-use; (3) whether there has been any other use; and (4) the owner's intentions.
- 1.27. In relation to the submission of evidence to demonstrate the relevant history of a development, the Court has held (*F W Gabbitts v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. The government's Planning Practice Guidance (PPG) on lawful development certificates confirms that the onus of proof in such an application is on the

applicant, but if the local planning authority have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application (PPG Reference ID: 17c-006-20140306).

- 1.28. The PPG also confirms that the adequacy of the evidence to discharge the burden of proof should be determined on the balance of probabilities (rather than beyond all reasonable doubt). This has recently been demonstrated in appeal ref. APP/V1260/X/21/3285738, where the Planning Inspectorate awarded costs against a local planning authority for using the wrong test when considering an application for a lawful development certificate.
- 1.29. Various case law makes clear the meaning of 'balance of probabilities' and the implications for decision making. For example, in *Miller v Minister of Pensions* [1947] 2 All ER 372, Denning J states that "*if the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not*".
- 1.30. Similarly, in *RE H and Others (Minors)* [1996] AC 563, Lord Nicholls explained that:

*"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, **the occurrence of the event was more likely than not**. [...] Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that **the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred**. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."*

- 1.31. Considering the legislative context as set out above, the following chapter assesses the current lawful use of the property.

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# Chapter 2

## Assessment

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## 2. Assessment of Evidence

- 2.1. The following sections makes clear that the current lawful use of the property is Class C4.
- 2.2. Firstly, it is relevant to consider the context and background of the situation. The owner of the property, Samantha Mahajan, purchased the property jointly with her late husband in April 2007. The neighbouring house at number 20 was also purchased at a similar time (November 2007). Samantha's husband, Rajiv, passed away in June 2023. The property was rented as an HMO from February 2008. Whilst Samantha was fully aware of the HMO use of the property, it was Rajiv that had been managing it and was therefore closer to the day-to-day running of the HMO and setting up the tenancy agreements and HMO licence.
- 2.3. Following Rajiv's death, Samantha discovered that the HMO licence had lapsed, and records of some of the historic tenancies had not been kept. Whilst the lost tenancy agreements and lapsed HMO licence are unfortunate in terms of the completeness of the evidence submitted with this application, this does not in itself indicate that HMO use at the property was ever abandoned. Rajiv sadly took his own life following a mental health crisis, and it is entirely understandable that someone suffering such a crisis would not be focussed on maintaining accurate HMO records.
- 2.4. We reiterate that the decision to grant a certificate of lawfulness must be based on the balance of probabilities, and given the context of this situation, it is understandable, and indeed likely, that full records may not exist as they would in another case.

### HMO Licensing

- 2.5. Letters from Hillingdon Council's Private Sector Housing Team are presented at Appendix A. These are from June and November 2009, shortly after the point at which Rajiv commenced the HMO use of the property. These letters make clear the actions of Rajiv at that point in applying for and obtaining an HMO licence in 2009. There can be little doubt that the property's use as an HMO commenced at that point, and the Council's own HMO licensing records evidently show this.

- 2.6. As outlined in the Legislative Context section earlier in this statement, the Use Class Order did not include any specific classification covering HMOs until April 2010 and shared properties with up to six occupiers were generally not distinguished from residential properties in family/single occupancy use. Therefore, upon the introduction of the C4 use class in 2010, the property would have fallen, lawfully, within this new use class. The Article 4 Direction came into force on 24<sup>th</sup> March 2013, restricting the change of use from C3 to C4. This would have had no effect for the property, given its use as a C4 HMO had already commenced and had not since been abandoned.
- 2.7. Additionally, an email in March 2024 from the Council's Private Sector Housing team confirms the HMO use of the property at that point, and is also included in Appendix A.

### **Tenancy Agreements**

- 2.8. Various historic tenancy agreements are submitted. These cover periods from 2013 to 2019 (Appendix B). The tenancy agreements and deposit receipts from the current tenants are also included (Appendix C). Since Rajiv's death, Samantha has appointed Haart as letting agents to manage the property. Haart created new tenancy agreements at that point, in September 2023, although these relate to tenants who were already in situ before that date. As discussed above, given the context, it is understandable that there is not a full set of tenancy agreements available for the relevant period. However, the appended tenancy agreements do corroborate the other evidence submitted, which all point to the same version of events, i.e. that the property has been lawfully converted to an HMO and this use has not been abandoned. The tenancy agreements listed below have been appended to this statement. It is relevant to note that the end date of the tenancy agreements is typically not when a tenant moves out, as the tenancy defaults to a 'rolling' contract after that point. The start date of the current tenancies is not the move-in date of those tenants, as the tenancy contracts were refreshed at that point by Haart.
- Paul Stray; John Woodcock; Barry Kealy – From August 2013
  - Lauren Jackson; Rachel Hicks; Omair Sohail – From October 2014
  - First Floor Rear Room - From December 2018 - William Gutteridge

- Ground Floor Room - From April 2019 - Christopher John Breakspeare
- Second Floor Rear Room - From June 2019 - Paulius Baliukis
- Room 1 - September 2023 to present day – Rizwan Yousuf
- Room 2 - September 2023 to present day – Brendan Edward McGuinness
- Room 3 - September 2023 to present day – Kieran Mintey-Newell
- Room 4 - February 2016 to September 2023 (continued under new contract below) - Dario De Olave Subieta
- Room 4 - September 2023 to present day – Dario De Olave Subieta
- Room 5 - October 2023 to present day – Matthew Ross

### **Bank Statements**

- 2.9. To further corroborate the history of the property, bank statements are provided at Appendix D showing rental payments into Mr Mahajan's account. These 158 pages of statements are clear evidence of the continued receipt of rental payments (noting that some of these transactions relate to the neighbouring HMO at number 20). These cover the period from August 2016, which is as far back as the bank keeps records.
- 2.10. It can be seen that the payments received align with the names on the tenancy agreements provided. For example, regular payments from Kieran Mintey-Newell can be seen from January 2019. It can also be seen that payments from Brendan McGuinness commence in June 2020, and Rizwan Yousuf in November 2020. It should be noted that some tenants previously preferred to pay the rent in cash as they themselves were paid in cash and therefore do not appear on the bank statements.

### **Council Tax Bills**

- 2.11. The council tax bills submitted with this application show that Mr Mahajan had been paying the council tax (Appendix E). The records date back to charges from 2013 and show Mr Mahajan's home address was not at this property and he resided at an alternative location. It is very common for HMO landlords to include all bills including council tax in the rent, as it can be difficult to organise the splitting of bills between unrelated tenants. In this regard, the fact that Mr Mahajan did not reside at the address but was paying the council tax strongly

supports the position that the property was used as an HMO throughout these years. The records also show a Class N exemption which relates to council tax exemption while the property was occupied by students.

2.12. Also included in Appendix E are letters from universities confirming the student status of several occupants to qualify for council tax exemption. These are from academic years 2013/14 and 2014/15 and are clear evidence of the property being occupied by students and as an HMO at that time. The relevant tenants are:

- Michaela Hill (2013/14)
- Lauren Jackson-Purvis (2014/15)
- Umair Sohail (2014/15)
- Rachel Louise Su Ling Allen (2014/15)

### **Statutory Declaration**

2.13. While the evidence presented is more than sufficient to make clear the history of the property and discharge the burden of proof, we enclose with this application several sworn statutory declarations (Appendix F), which make clear the history of the property, and align with the evidence provided to further corroborate the position. Statutory Declarations from the following individuals are provided:

- Samantha Mahajan – owner and applicant
- Dario De Olave Subieta – tenant
- Rizwan Yousuf – tenant
- Graeme Simpson – colleague of deceased owner Rajiv Mahajan
- Paul Dudman – father-in-law of deceased owner Rajiv Mahajan
- Sanjiv Mahajan – brother of deceased owner Rajiv Mahajan

2.14. These declarations, made under the Statutory Declarations Act 1835, hold significant weight in determining the history of the property, and confirm the use of the property as an HMO continuously since February 2008. In combination with the other evidence, they make clear and unambiguous the sequence of events and the history of the property.

- 2.15. The sworn statutory declarations from current tenants Rizwan Yousuf and Dario De Olave Subieta confirm the length of time at which they have resided in the property as HMO tenants and confirm that multiple other unrelated tenants have been living there with them throughout their occupancy.
- 2.16. Even without these declarations, there is sufficient other evidence to lead to a clear position that the existing use of the property is lawful on the balance of probabilities. Combined with the other evidence, these statutory declarations show that this is the case, well beyond the balance of probabilities.
- 2.17. Cumulatively, the evidence provides a clear summary of the history of the property. On the basis of the evidence presented in the application, the proposal meets and exceeds the balance of probabilities test and proves the use of the property as a C4 HMO has existed continuously for at least a 10-year period which make it immune from enforcement and therefore lawful. It is also lawful on the basis that the change of use happened lawfully prior to the introduction of the Article 4 Direction, and the use has not since been abandoned.



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# Chapter 3

## Conclusion

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### 3. Conclusion

3.1. This application seeks the confirmation of the lawful status for the use of number 19 Greatfields Drive, Uxbridge UB8 3QN as a House of Multiple Occupation (HMO) for up to six individuals under Use Class C4, within the London Borough of Hillingdon.

3.2. In summary:

- Evidence and statutory statements have been submitted which paints a clear picture of the history of the property as far back as 2007.
- Letters from Hillingdon Council's Private Sector Housing Team show that an HMO licence was obtained in 2009. There can be little doubt that the property's use as an HMO commenced at that point, and the Council's own HMO licensing records evidently show this.
- Given the circumstances, it is understandable that there is not a full set of tenancy agreements available for the relevant period. However, the submitted tenancy agreements clearly corroborate the full suite of evidence including bank statements and council tax bills, which all point to the same version of events.
- Statutory declarations are provided from multiple individuals, including tenants, which confirm the situation and the use of the property as a small HMO. These hold substantial legal weight.
- All of the evidence is corroboratory and points to the same sequence of events at the property. There is no evidence which points to any other version of events.
- As a whole, the evidence cumulatively leads to a position where the lawful use of the property is undoubtedly as a C4 HMO.

3.3. This statement indicates a clear position concerning the relevant history and current lawful use of the property. The evidence is sufficient to discharge the burden of proof placed on the applicant to show plainly that, on the balance of probabilities, the current lawful use is Use Class C4.

- 3.4. Therefore, in accordance with Section 191(4) of the Town and Country Planning Act 1990, the existing use should be deemed lawful and a certificate to that effect should be issued.
- 3.5. On behalf of the applicant, we kindly request the local planning authority to acknowledge the lawfulness of this proposed change of use and to grant the applicant a Certificate of Lawfulness for existing use (CLEUD). Thank you in advance for your consideration of this application and we look forward to receiving your decision. Should you have any queries in respect of this submission, please do not hesitate to contact us.

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# Appendix A

## Letters from Hillingdon Council's Private Sector Housing Team

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# Appendix B

## Historic tenancy agreements (2013 to 2019)

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# Appendix C

## Current tenancy agreements

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# Appendix D

## Bank Statements

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# Appendix E

## Council Tax Records

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# Appendix F

## Signed Statutory Declarations

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