

Delegated Decision Report

Application No:	25/0272	Statutory Period Expires:	2nd June 2025
------------------------	----------------	----------------------------------	----------------------

Site:	88 Caerleon Road Newport NP19 7BY		
Proposal:	LAWFUL DEVELOPMENT CERTIFICATE (EXISTING) FOR THE USE OF THE PROPERTY AS A 6 PERSON HOUSE IN MULTIPLE OCCUPATION (C4 USE)		
Applicant:	H Edwards		
Type:	Lawful Development Existing	Ward:	St Julians
Decision:	ISSUED		

1. BACKGROUND

1.1 None.

2. SITE LOCATION AND CONTEXT

2.1 88 Caerleon Road is a mid-terraced, two storey dwelling, located in the St Julians ward.

3. DESCRIPTION OF DEVELOPMENT

3.1 The proposal seeks confirmation of the lawful use of the building as a House in Multiple Occupation for 6 people. The floor plans show two bedrooms at ground floor along with a kitchen and separate dining room and four further bedrooms and a bathroom at first floor.

4. RELEVANT SITE HISTORY

App Number	Proposal	Decision	Decision Date
18/0003	CERTIFICATE OF LAWFUL USE RELATING TO THE USE OF PROPERTY AS A SIX BED HOUSE IN MULTIPLE OCCUPATION (USE CLASS C4)	REFUSED	01/03/2018

8. ASSESSMENT

This application seeks to determine the legality of the existing use of 88 Caerleon Road as a House in Multiple Occupation (HMO). The application property is a terraced property located in the St Julians ward.

8.1 In Wales in February 2016 a new use class was introduced – C4. Use class C4 is defined as ‘use as a dwellinghouse by not more than six residents as a HMO.’ Prior to the introduction of the C4 HMO category in 2016, all HMOs were sui generis.

8.2 As noted above, an LDCE application has previously been refused on the basis that information was provided to demonstrate that the property has a lawful use as a HMO. Specifically, the applicant provided evidence of licenses for use as a HMO but no evidence of the actual use of the property as a HMO.

8.3 As this is an application for a Certificate of Lawfulness, the planning merits of the development are not in question. The consideration of the application is based on the evidence submitted to prove the claim for lawfulness, and, as such, there are no planning policies of relevance. Notwithstanding this, the application has been considered with regard to Welsh Office Circular 24/97 ‘Enforcing Planning Control: Legislative Provisions and Procedural Requirements’, in particular Annex 8 on Lawfulness and the Lawful Development Certificate (LDC).

- 8.3 In view of the basis on which the Certificate of Lawfulness is sought (10 years continuous use), the principal issue to consider in this Certificate of Lawfulness application is whether the evidence submitted with the application is sufficient to demonstrate that the property has continuously been used as a HMO for (up to) 6 people.
- 8.4 Paragraph 8.12 of Circular 24/97 notes that the onus of proof in a LDC application is with the applicant. It also notes that the LPA should always co-operate with an applicant seeking information they may hold. The relevant test of matters relating to applications for a Certificate of Lawful Use as detailed within the 1990 Act, is the '*balance of probability*'. Local Planning Authorities are advised that if they 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 the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate.
- 8.5 In terms of supporting evidence the following information has been received:
- Statutory declarations from the current and previous owners of the property;
 - HMO Licenses;
 - Rent payment summaries from management agency Cwtch Property 2019 to 2025 and invoices for maintenance works;
 - Council Tax records since 2019;
 - Tenancy agreements 2019 - 2025
- 8.6 In planning terms, prior to 25 February 2016, all HMOs in Wales were unclassified by the Town and Country Planning (Use Classes) Order 1987 and considered to be sui generis (a class of its own). Therefore, planning permission was required before a dwellinghouse could undergo a material change of use to an HMO. On 25 February 2016, the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016 came into force. This created a new use class for small HMOs, class C4 (HMO).
- 8.7 The applicant's Planning Statement claims that smaller HMOs had been included within use class C3 prior to February 2016, but this is not strictly correct. At that time, dwellinghouses in Class C3 may have included houses occupied in a way that would now be C4 pursuant to the changes in the Order in 2016 but they were not regarded as HMOs per se. It goes on to state that the property has to be shown as being in C4 use either prior to February 2016 or for a continuous period of 4 years. However, it should be noted that a number of appeal decisions have confirmed that the correct period for immunity from enforcement is 10 years rather than 4 as stated by the applicant. The applicant must therefore provide evidence dating back ten years prior to the submission of this application.
- 8.8 In terms of the supporting evidence, the statutory declaration from the previous owner of the property confirms the property was used as a six person HMO continuously from July 2014 until the date the property was sold to the current owner on 28th June 2019. The statutory declaration from the current owner confirms the property to have been in use as a six person HMO during their period of ownership (from 2019 to current day). The statutory declarations provided therefore confirm a continual use of the property as a six person HMO for over ten years including the ten years prior to the LDC application being made. The statutory declarations carry significant weight.
- 8.9 The HMO licenses provided name either Morgan Stewart who was the former owner or Hilary Edwards who is the current owner of the property as the license holder and date from July 2017 to January 2025.
- 8.10 The Tenancy agreements are dated October 2020, May 2021, January 2022, April 2022, April 2023 and refer to the room within the house which is being let.
- 8.11 The application supporting statement refers to email correspondence "confirming that the original licence was issued in July 2014." However, whilst the correspondence refers to verbal dialogue with "Donna" in HMO Newport, the correspondence is between a conveyancer and property agent, and as such limited weight is attributed to this.

- 8.12 Council Tax records and utility bills are provided but these are of no value in confirming the use of the property.
- 8.13 Invoices from Cwtch Property Group who appear to be managing the property and other maintenance invoices dated July 2019, September 2019, June 2020, June 2021, July 2022, August 2023, July 2023, August 2024, February 2025 have been provided. The Cwtch property invoices refer to six bedrooms being rented at the property. This information does not cover the period prior to 2019.
- 8.14 As noted above, the applicant must demonstrate a lawful use for the ten years prior to the application being made. Notably, the application is lacking in evidence prior to 2017, with HMO licenses from Newport City Council, tenancy agreements and invoices post-dating this. Whilst the onus is on the applicant to provide evidence, officers have contacted the Council's Environmental Health Licensing officers who confirm that its records show the property was licensed for six people during the following dates:
- 30.06.2014 - 30.06.2019
20.01.2020 - 19.01.2025
20.01.2025 - 19.01.2030
- 8.15 The information from the Council's Licensing team, in combination with the statutory declarations, one of which confirms the property was used as a six person HMO continuously from July 2014 and in the absence of information to indicate otherwise, on the balance of probabilities it is considered that sufficient information has been submitted to show the property has had a continual use as a House in Multiple Occupation (Use Class C4) and is immune from enforcement.
- 9.2 ***Equality Act 2010***
The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.
- 9.3 Having due regard to advancing equality involves:
- removing or minimising disadvantages suffered by people due to their protected characteristics;
 - taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
 - encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
- 9.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.
- 9.5 ***Planning (Wales) Act 2015 (Welsh language)***
Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.
- 9.6 ***Newport's Well-Being Plan 2018-23***
The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which

was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

10. CONCLUSION

10.1 It is considered that sufficient information has been submitted to show the site has had a continual use as a house in multiple occupation (HMO), Use Class (C4), in the ten years prior to the date of the application. The use as a 6 person HMO is lawful.

7.2 Therefore, the certificate is issued.

11. DECISION

ISSUED

01 The applicant has submitted sufficient information to show that on the balance of probabilities the property has had a continuous use as a 6 person house in multiple occupation (Use Class C4) for the ten years prior to the submission of the application and the use is lawful.

NOTE TO APPLICANT

01 This decision relates to: Planning Statement March 2025, Statutory Declarations by Hilary Edwards and Morgan Stewart, HMO licenses, email correspondence (Exhibit 3), rent payments from managing agent Cwtch Property 2019 to 2025, Council Tax Liability from 2019, Utility bills from 2019 to 2025, Tenancy agreements – 2019 to 2025, TRD-222429 - A1/02.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). No Policies were relevant to the determination of this application.

03 Due to the minor nature of the proposed development (including any demolition) and the location of the proposed development, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.