

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/2237	Case Officer:	Hamish Evans
Application Type:	Lawful Development Certificate -Existing		
Proposal:	Existing Lawful Development application to formally confirm that Drury Lodge is in the correct planning class. As Drury Lodge is an HMO with 12 units, licenced to house up to 20 tenants, it should be in the Sui Generis class.		
Site:	Drury Lodge, Cranston Road, East Grinstead, West Sussex, RH19 3HW, , ,		
Validation Date	5 Sep 2025	Overall Expiry Date:	10 Oct 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	14 Oct 2025
Target Date:	31 Oct 2025	Recommending Officer Signature:	Hamish Evans

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	Joanne Fisher	Date:	16 Oct 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/2237

Drury Lodge, Cranston Road, East Grinstead, West Sussex, RH19 3HW, , Existing Lawful Development application to formally confirm that Drury Lodge is in the correct planning class. As Drury Lodge is an HMO with 12 units, licenced to house up to 20 tenants, it should be in the Sui Generis class.

Mr Martin Brown

SUMMARY OF REPRESENTATIONS

No third-party letters of representation have been received.

SUMMARY OF CONSULTEES

None received.

TOWN COUNCIL OBSERVATIONS

East Grinstead Town Council

No comment

INTRODUCTION

The proposal is seeking a Lawful Development Certificate under section 191 of the Town and Country Planning Act 1990, to establish the lawfulness of the existing building being used as an HMO with 12 units licenced to house up to 20 tenants, under a sui generis use class at Drury Lodge Cranston Road East Grinstead RH19 3HW.

Relevant Planning History

None relevant.

SITE AND SURROUNDINGS

The site is located within the East Grinstead built up area boundary and a predominantly residential area. The surrounding area to the north, south and west of the site is predominantly residential with open countryside and woodland located to the east of the site. The application site consists of a two-storey building which is characterised by bare brown brickwork and brown clay hanging tile walls, brown clay roof tiles and white uPVC window and door frames. Cranston Road is located to the south of the site and Blackwell Hollow is located to the east of the site.

APPLICATION DETAILS

The application is seeking a Lawful Development Certificate under section 191 of the Town and Country Planning Act 1990 as to whether the use of the building as a House of Multiple Occupancy with 12 units for up to 20 tenants with a Sui Generis use class is lawful.

The submitted application documents state that Drury Lodge was originally constructed as a single dwelling in 1895 and that it has been operating as a house of multiple occupancy since 1961. Three HMO licences have been submitted with the application dating from May 2013 to September 2025. 12 Tenancy agreements from January 2022 to August 2025 have been submitted. A number of historic newspaper articles which show the site as an HMO have been submitted with the application and they date from 1978.

RELEVANT LEGISLATION

Section 191 of the Town and Country Planning Act 1990 indicates that the burden of proof lies with the applicant. The relevant test is 'the balance of probability' and 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 that the applicants' version is precise and unambiguous to justify the grant of a certificate. This section also indicates that 'if on an application under this section, the LPA 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 the application, they should issue a certificate to that effect; and in any other case they shall refuse the application'.

Time limits for enforcement set out in Section 171B of the Town and Country Planning Act 1990:

'(1) 'Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of -

(a) in the case of a breach of planning control in England, ten years beginning with the date in which the operations were substantially completed, and

(b) in the case of a breach of planning control in Wales, four years beginning with the date on which the operations were substantially completed.

(2) 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 -

(a) in the case of a breach of planning control in England, ten years beginning with the date in which the operations were substantially completed, and

(b) in the case of a breach of planning control in Wales, four years beginning with the date on which the operations were substantially completed.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

3) 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.

4) The preceding subsections do not prevent -

a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.'

It should be noted that Section 171B of the Town and Country Planning Act 1990 was amended by the section 115 of the Levelling-up and Regeneration Act 2023. The amendments in part removed the previous enforcement period in (2) of section 171(B) which was four years and replaced it with a 10 year enforcement period.

Section 115 of The Levelling-up and Regeneration Act 2023 includes transitional arrangements for this change which state that the alterations to section 171(B) made by the 2023 Act

'do not apply where -

(a) in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (5) (time limits), the operations were substantially completed, or

(b) in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred,

before the day on which that section comes into force.'

The 2023 Act came into force on the 25th of July 2024. From the documents that have been submitted it is considered that the breach in question occurred in 1961, which was when the application documents first state that the building was used as an HMO.

As such the transitional arrangements as set out within the 2023 Act are considered appropriate and the relevant time period is ten years. The applicant is required to demonstrate on the balance of probabilities that the building has been used as a House of Multiple Occupancy with 12 units for up to 20 tenants within a Sui Generis use class, continuously for more than ten years from the date of this application

The onus of proof is firmly on the applicant and the standard of proof is the balance of probability. If there are contradictions in the applicant's evidence on material issues, then the LPA would be entitled to refuse the certificate.

More recently the Localism Act has introduced legislation under section 171BA for cases where the LPA that there has been deliberate concealment. This states:

'171BA Time limits in cases involving concealment

1) Where it appears to the local planning authority that there may have been a breach of planning control in respect of any land in England, the authority may apply to a magistrates' court for an order under this subsection (a "planning enforcement order") in relation to that apparent breach of planning control.

2) If a magistrates' court makes a planning enforcement order in relation to an apparent breach of planning control, the local planning authority may take enforcement action in respect of-

a) the apparent breach, or

b) any of the matters constituting the apparent breach, at any time in the enforcement year.

3) "The enforcement year" for a planning enforcement order is the year that begins at the end of 22 days beginning with the day on which the court's decision to make the order is given, but this is subject to subsection (4).

4) If an application under section 111(1) of the Magistrates' Courts Act 1980 (statement of case for opinion of High Court) is made in respect of a planning enforcement order, the enforcement year for the order is the year beginning with the day on which the proceedings arising from that application are finally determined or withdrawn.

5) Subsection (2)-

a) applies whether or not the time limits under section 171B have expired, and

b) does not prevent the taking of enforcement action after the end of the enforcement year but within those time limits.'

This confirms that where a person has deliberately set out to mislead the LPA, the time limits set out in Section 171B of the Town and Country Planning Act 1990 do not apply.

ASSESSMENT

The evidence that has been submitted consists three HMO licences dating from May 2013 to September 2025, 12 Tenancy agreements from January 2022 to August 2025 and a number of historic newspaper articles which show the site as an HMO which date from 1978.

With this in mind and in the absence of any contradictory evidence, it is considered that on the balance of probabilities, that Drury Lodge has been used as a House of Multiple Occupancy with 12 units for up to 20 tenants within a Sui Generis use class, continuously for more than ten years from the date of this application.

CONCLUSION

It is considered that the applicant has established on the balance of probabilities that Drury Lodge has been used as a House of Multiple Occupancy with 12 units for up to 20 tenants within a Sui Generis use class, continuously for more than ten years from the date of the Lawful Development Certificate application and a Lawful Development Certificate can be issued.

Decision: Permission

Case Officer: Hamish Evans