



**FEN PLACE MILL & HOUSE
EAST STREET
TURNERS HILL
WEST SUSSEX
RH10 4QQ**

**CERTIFICATE OF LAWFULNESS OF EXISTING DEVELOPMENT FOR
MAIN GARAGE BLOCK, 4 BAY GARAGE BLOCK, DOUBLE GARAGE
BLOCK, OUTBUILDING AND TARMAC DRIVEWAY / PARKING AREA**

Client: MR & MRS T BEASLEY

MAY 2026

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1.0 Introduction

- 1.1 Sadler Planning Limited is instructed by Mr and Mrs Terry Beasley, the Applicants to submit a certificate of Lawful Existing Development application for the existing main garage block, 4 bay garage block, double garage block, outbuilding and tarmac driveway / parking area at Fen Place Mill and House, East Street, Turners Hill, West Sussex, RH10 4QQ. 'The site' is shown edged red on the Location, Block and Site Plan (drawing numbers PL.001, PL.002 and PL.003) shown in Exhibit 1.
- 1.2 The plans of the garage blocks, outbuilding and driveway / parking area (drawings PL.004, PL.005, PL.006 and PL.007) can also be found at Exhibit 1.
- 1.3 This statement provides the evidence to support the application.
- 1.4 This Supporting Statement has been written by Kathryn Sadler BA (Hons) Dip TP MRTPI who has over 23 years experience of working as a Town Planner within local authorities and private practices within the southeast.
- 1.5 The author has visited the site in order to gain all necessary information and to view the land and to discuss the evidence that is presented in this statement.

2.0 Background

- 2.1 Mr and Mrs Terry Beasley (the Applicant's) purchased Fen Place Mill and House on 31st July 2025 and have inherited a number of garage blocks, a tarmac parking area and an outbuilding that were not subject of a planning application by the previous owner.
- 2.2 There were two ancillary residential tennis courts on the site of the main garage block and parking area prior to 2014 when the main garage block was erected.
- 2.3 The 4 bay garage block, 2 bay garage block and the outbuilding were erected by 2009 / 2010 as there are photographs showing these buildings in situ.
- 2.4 Therefore this certificate of lawfulness of existing development is being submitted as the works have been substantially completed and are beyond the statutory periods of enforcement. Further the development does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force in accordance with S191(2) and (3) of the Town and Country Planning Act 1990.

3.0 **Statutory Framework and Guidance**

Application for Lawful Development Certificate

- 3.1 The relevant legislation for determining a Lawful Development Certificate application is section 191 of the Town and Country Planning Act 1990 (1990 Act). The subsections relevant to this application are as follows:

(1) *Section 191(2):*

...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); and*
- (b) *they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

(2) *Section 191(4):*

If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

- 3.2 The burden of proof lies with the Applicant to demonstrate that, on the balance of probabilities, no enforcement action may be taken and therefore that the Lawful Development Certificate should be granted. As per the case *Gabbittas v Secretary of State for the Environment and Newham Borough Council* [1985] JPL 630 good reasons must be provided for the evidence provided by the Applicant to be set aside, particularly in the absence of any evidence to the contrary on the part of the Council.

Time limits for enforcement action

- 3.3 To be immune from enforcement action by virtue of S171B of the Act, the Applicant must satisfy the time limits as set out below:

(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 the period of—*

- (a) *in the case of a breach of planning control in England, ten years beginning with the date on 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.*

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- (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 of the breach, and*
 - (b) *in the case of a breach of planning control in Wales, four years beginning with the date of the breach.*
- 3.4 Section 171B of the TCPA was amended by the Levelling - up and Regeneration Act 2023 which came into effect on 25 April 2024. The amendments set a blanket 10-year enforcement period for all breaches of planning control. However, transitional provisions were also put in place as set out under The Planning Act 2008 (Commencement no. 8) and Levelling up and Regeneration Act 2023 (Commencement no. 4 and Transitional Provisions) Regulations 2024. The effect of the transitional provisions is that the 10 year time limit does not apply to a breach of planning control referred to in section 171(B)(1) of the TCPA where the operations were substantially completed before the date that the new enforcement periods came into effect (25 April 2024).
- 3.5 Here, section 171B(1) is relevant to the Lawful Development Certificate application as the garage blocks, outbuilding and tarmac amount to operational development under section 55 of the 1990 Act. These works were laid out between 2008 and 2015 and so the transitional arrangements set out above apply and the relevant immunity period is four years.

4.0 The Evidence

- 4.1 Having established that the relevant immunity period for the works is four years, per section 171B of the TCPA 1990 the evidence must demonstrate that the works were substantially completed at least four years ago.
- 4.2 Evidence has been presented in the form of four statutory declarations from:
- Mr Terry Beasley (Current Land Owner);
 - Mr Steve Sanders (Full -Time Gardener at Fen Place Mill & House for 28 years);
 - Mr Chris Cook (Supplied some of the building materials & has farmed the land at Fen Place Mill and House for 26 years);
 - Mr Richard Verbeeten (Poured and laid the foundations for the garages, arranged the tarmac parking area to be laid, dredged the lakes and has been visiting Fen Place Mill and House for over 20 years);
- 4.3 There are a number of appeal decisions whereby the Inspector has given statutory declarations “substantial” or “significant” weight, including in the determination of lawful development certificate applications.¹ In one of these decisions, the Inspector found that it is appropriate to attach “substantial” weight to statutory declarations where the information contained in them is “*precise and unambiguous and where they have been properly declared and witnessed*”.²
- 4.4 The statutory declarations listed at 4.2 above are specific, consistent, unambiguous and have been properly declared and witnessed. Therefore, they should be given substantial weight in the determination of this Lawful Development Certificate application.
- 4.5 The evidence produced with the statutory declarations and accompanying this Lawful Development Certificate application demonstrates that the tarmac driveway / parking area, garage blocks and outbuilding have been in situ for over ten years, well beyond the relevant four-year statutory period relevant to this application.
- 4.6 A photo dated October 2009 shows the pond being dredged with Steve Sander (the gardener) and Tad (the builder) within the photo and the double garage in the background. A second photo dated 15th April 2010 shows the outbuilding in situ. These photos are submitted as evidence at Exhibit 2 of the Statutory Declarations. These photographs taken in 2009 and 2010, clearly show the double garage and outbuilding in situ.

¹ See APP/T5150/X/3138588 (2016), APP/L5810/C/3172432 (2018) and APP/L5240/X/22/3301847 (2023) for example.

² Appeal decision with reference APP/L5810/C/3172432.

4.7 Aerial photographs of the site dated:

- September 2012;
- June 2013;
- July 2014;
- September 2018;
- April 2020;
- June 2021; and
- September 2025

at Exhibit 3 of the Statutory Declarations clearly show the following:

- The September 2012 and June 2013 aerial photos show the double garage, 4 bay garage and the outbuilding in situ.
- The July 2014 aerial photo shows the foundations and walls of the main garage block being built.
- The September 2018 aerial photo shows the main garage block, the double garage block, some of the 4 bay garage block, the outbuilding and the tarmac driveway in situ.
- The April 2020 aerial photo shows the main garage block, the 4 bay garage block, the double garage block, the outbuilding and the tarmac driveway and parking area in situ.
- The June 2021 aerial photo shows the main garage block, 4 bay garage block, double garage block, outbuilding and the tarmac driveway and parking area in situ.
- The September 2025 aerial photo shows the main garage block, the 4 bay garage block, the double garage block, the outbuilding and the tarmac driveway and parking area.

4.8 Photographs taken by Tad the Polish Builder on 30th May and 20th June 2014 show foundations of the main garage block being laid and the block work walls starting to be built. These photos can be found at Exhibit 4 of the Statutory Declarations.

4.9 Photographs taken by Tad the Polish Builder on 8th August 2014 show the main garage block walls and roof structure built. These photos can be found at Exhibit 5 of the Statutory Declarations.

4.10 Photographs taken by Tad the Polish Builder on 4th September 2014 show builders laying tiles on the roof of the main garage block. The second photo shows the 4 bay garage block and the double garage block in the background of the photo. These photos can be found at Exhibit 6 of the Statutory Declarations.

4.11 A photograph taken by Tad the Polish Builder on 4 March 2015 shows the main garage block built and the tarmac driveway / parking area in situ. This can be found at Exhibit 7 of the Statutory Declarations.

4.12 Photographs taken on 25th September 2025 show the main garage block, the 4 bay garage block, the double garage block and the outbuilding in situ. These can be found at Exhibit 8 of the Statutory Declarations.

- 4.13 Photographs taken on 24th February 2026 show the main garage block, the 4 bay garage block, the double garage block and the outbuilding in situ. These can be found at Exhibit 9 of the Statutory Declarations.
- 4.14 Extensive evidence has been presented to demonstrate that the garage blocks, outbuilding and tarmac driveway and parking area have been in situ for over four years (also over ten years) and that the building operations occurred more than four and ten years prior to the date of the application and are immune from enforcement action by virtue of S171B(1) and S171B(3).
- 4.15 It is considered that on the balance of probabilities, the garage blocks, outbuilding and tarmac driveway and parking area have been substantially complete for a period of 4 years or more (and 10 years or more) from the date of the lawful development certificate application and a lawful development certificate in terms of section 191 of the Town and Country Planning Act 1990, as amended, should be issued.

5.0 Conclusion

- 5.1 The statutory declarations and evidence submitted in the form of dated aerial photographs and dated photographs clearly demonstrate that the main garage block, the 4 bay garage block, the double garage block, the outbuilding and the tarmac driveway and parking area ('the site') have been in situ for over 4 years (and over 10 years).
- 5.2 It has been demonstrated that a continuous four and ten year period have been established by virtue of S171B (1) and (3) of the Act and immunity from enforcement action applies.
- 5.3 Therefore this certificate of lawfulness of existing development is being submitted as the works have been substantially completed and are beyond the statutory periods of enforcement. Further the development does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force in accordance with S191(2) and (3) of the Town and Country Planning Act 1990.
- 5.4 It is considered that on the balance of probabilities, the garage blocks, outbuilding and tarmac driveway and parking area have been substantially complete for a period of 4 years or more (and 10 years or more) from the date of the lawful development certificate application and a lawful development certificate in terms of section 191 of the Town and Country Planning Act 1990, as amended, should be issued.

Appendix A

Appeal Decision

Inquiry held on 1 November 2016

Site visit made on 1 November 2016

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 December 2016

Appeal Ref: APP/T5150/X/15/3138588 9 Stonebridge Park, London NW10 8EJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Wise Estates (UK) Ltd against the decision of the Council of the London Borough of Brent.
- The application Ref 15/4053, dated 18 September 2015, was refused by notice dated 13 November 2015.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is C4 Small HMO with no more than six residents.

Summary of Decision: The appeal is dismissed.

Application for costs

1. At the Inquiry an application for costs was made by the London Borough of Brent against Wise Estates (UK) Ltd. This application is the subject of a separate Decision.

Background and procedural issues

2. All evidence at the Inquiry was taken on Affirmation.
3. The appeal site is a terraced 2-storey residential property on the east side of Stonebridge Park. It was acquired by the appellant on 4 July 2014 and it is common ground that at stage it was laid out as a single dwelling house.
4. Mr Mann on behalf of Wise Estates says that following acquisition works were undertaken to convert the property and this included the construction of a single storey extension. These works took about 3 months and the evidence shows that by October 2014 it was occupied by a number of tenants.
5. The Council issued an Enforcement Notice on 11 February 2015 alleging that there had been a breach of planning control so that No 9 was now in use as six flats. This Notice was not appealed and came into force on 23 March 2015 and the period for compliance with the steps outlined in the Notice was 6 months. In summary the steps required: 1. the cessation of the use of the premises as flats; 2. the removal of kitchen and bathroom facilities¹ and 3. the restoration

¹ Except one kitchen and 2 bathrooms

of the use as a single dwellinghouse. This Notice is not a matter over which I have any jurisdiction but it is a material consideration in the current appeal.

6. The application for the Lawful Development Certificate (LDC) for the proposed use was made approximately a week before the expiry of the period for compliance with the requirements of the Notice. An application for a LDC must be determined on the basis of fact and law and considered against the appropriate legislation in force at the time the application was made. Section 192(2) of the Act² says that if on an application the decision maker is satisfied "that the use...described in the application would be lawful if instituted or begun at the time of the application", the certificate shall be approved. The onus of proof lies firmly on an appellant and to succeed the evidence submitted must be sufficiently precise and unambiguous.
7. Two of the plans submitted as evidence to the Inquiry had the same reference number and the same date but showed a different layout of residential accommodation in No.9. It was agreed, for the purposes of the Inquiry and the decision, that the plans should be renumbered to avoid confusion. Consequently the plan titled 'Existing' and showing the property as a 4-bedroom single family house is known as Dwg No 01; the 'Proposed' plan showing 5 units of accommodation is known as Dwg 02. These plans are those that formed part of the application for the LDC. A third plan, included in the appellant's appendices, also titled 'Proposed', numbered 02 and showing 6 units is referred to in my decision as Dwg No 01a. All the drawings are dated 1 July 2014.
8. Class L of Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) says that the following development consisting of a change of use of a building is development permitted by the Order:
 - a) a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Use Classes Order (UCO), to a use falling within Class C3 (dwellinghouse) of that Schedule;
 - b) a use falling within Class C3 (dwellinghouses) of the schedule to the UCO, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.
9. The parties agree that the layout of No 9 illustrated on Dwg 02 (5 units), would, if the tenants shared a kitchen, fall within the meaning of "house in multiple occupation" (HMO) as defined by Section 254 of the Housing Act 2004.

Main issue

10. The main issue in this appeal is whether or not the proposed use of the building as a small HMO would be lawful at the date of the application.

Reasons

11. This issue can be considered in the light of three possible scenarios or starting points.
12. Firstly, Mr Ormonde on behalf of Wise Estate's says that whether or not the building was in use at the date of the application as 6 self-contained flats is

² Town and Country Planning Act 1990 as amended

irrelevant because the lawful use of the building is as a single dwelling house. What is more, the steps of the Notice require the building to be returned to its former configuration and that is a single dwelling house. Thus the baseline for the LDC application, he says, is that the lawful use of No.9 at the time of the application was use as a single dwelling house (C3). In the alternative he said the property was already in C4 use at the date of the application.

13. Secondly, the Council say, in their preferred scenario, that the starting point must be the evidence that shows that since about October 2014 the property has been subdivided and occupied as 6 self-contained flats and in their view it was in this use at the relevant date.
14. Thirdly and in my view, it is necessary to address the wording of the deemed permission, conferred by Class L of the GPDO in the context of the wording of S192 of the Act. Hence in this scenario, the starting point must be that the onus is on the appellant to demonstrate, on the balance of probabilities that No.9 was in C3 or C4 use at the time of the application.

The use of No. 9 on 18 September 2015

C3 use

15. As I have noted above the LDC application was supported by 2 plans, Dwg 01 and Dwg 02. However at the Inquiry Mr Mann on behalf of Wise Estates appeared to distance himself from Dwg 01 and refers to the layout on the plan Dwg 01A³, as the current or existing layout of the property; this is despite the title 'Proposed Floor plan'. This plan shows 6 units and my site visit showed that this layout approximates to the current configuration of accommodation on site. When questioned, Mr Mann seemed unaware that the plan was different from the plan put in as part of the LDC. Although he said he had commissioned the drawing up of the plans he could not explain why all three plans bear the same date but show different internal arrangements. He suggested that this was simply a drafting error but also said that he was not particularly familiar with the property. He also suggested that, irrespective of the plans which were submitted to support the application, these can now be discounted as unnecessary.
16. Similarly Mr Ormonde, who appeared on behalf of the appellant, said that although he had submitted the application for the LDC, he had not visited the appeal site at No 9. Consequently he said that he did not know when No.9 was in use as a C3 dwelling and or how the property was laid out. Moreover because the application was for the proposed use of No 9, the historic or actual use was irrelevant.
17. Hence Wise Estates was neither able to explain why the plan submitted with the LDC application, (Dwg 01), showed the 'Existing' layout as a 4 bedroom single dwellinghouse nor provide any cogent evidence that the building was in C3 use at the time of the application.
18. In these circumstances, and the absence of evidence to demonstrate, on the balance of probabilities that No. 9 was in C3 use at the time of the application, I find that this part of the appellant's preferred scenario appears flawed.

³ Renumbered for the purposes of clarity as noted in paragraph 7 of this decision

C4 use

19. The evidence shows that the appeal property was registered as 6 flats, for Council Tax purposes with effect from 30 June 2014. However, as noted by the appellant, the Valuation Office applies different criteria to that used by the Housing and Planning Acts. In this case therefore the Council Tax classification is not, in itself, determinative of whether or not a building is used as an HMO or divided into self-contained flats.
20. The tenants of Flat 3 and Flat 6 completed applications for the payment of Housing Benefit on the 16 October 2014. Each of these said in their applications that they had exclusive use of a bedsit room, a kitchen, a bathroom and a toilet. As a consequence housing benefit appears to have been paid at a higher rate, (1-bed flat £260.64 per week), than would have been the case if the premises were part of a HMO, for which the payment would be £97.83 per week. The evidence shows that these tenants were still in residence in July 2016 and were paid at this higher rate for at least a 9 month period from about the beginning of 2016. There is no evidence before me about the payment made in September 2015, but because the flats were occupied by the same tenants both in October 2014 and in January 2015, on the balance of probabilities, I consider it likely that the higher self-contained flat rate would have been paid at the date of the application for the LDC.
21. Although Mr Mann suggested that the payment of the higher rate is not an indicator that the premises were self-contained, he could not explain why any tenant would suggest that the premises comprised self-contained flats and provided exclusive use of cooking facilities. Housing benefit is not paid to the tenant and thus there is no incentive for a tenant to give misleading answers. Consequently I give significant weight to the tenants' own testimony.
22. The Council also submitted an Assured Shorthold Tenancy agreement for the period 3 March 2015-3 September 2015. This was in favour of Flat 2, where this tenant remains in occupation. The tenancy is in respect of Flat 2 only and does not imply or infer use of any communal facilities. Mr Mann was unable to explain why the tenancy agreement was in this form and said because he had so many other properties to manage he could not be expected to know the form or content of the tenancies at No. 9; he also said he did not normally visit the properties he managed because this was done by the staff he employed.
23. The appellant conceded that the steps in the Enforcement Notice had not been complied with and that the only action taken to date was the addition of 'blanking plates' to prevent the use of the power points located above the kitchen worktop in each room. However no evidence was provided to the Inquiry about the timing of this alteration and in particular if it had taken place by 18 September 2015.
24. I also heard that verbal requests had been made to the tenants to remove all cooking facilities from their rooms. Despite these requests, which were not supported by any substantive evidence, the Council says that all six rooms at No 9 were visited in October 2015 and they all had a toilet, washing facilities and cooking facilities at that date. The officer visiting the premises at that stage has now left the Council and thus was unable to give a first hand account at the Inquiry. But later visits by Council officers to 2 separate flats found evidence that cooking facilities were still in use in at least 2 units in December 2015 and January 2016 and this is supported by photographic evidence.

25. Mr Mann says that regular checks are made to ensure that tenants do not have their own cooking facilities, but I give this limited weight because even at the pre-arranged appeal site visit, access was not available to all the units. I also saw that at least one flat continued to have facilities available for cooking.
26. The appellant's evidence was evasive at best and in contrast the Council provided a wide range of supporting evidence and information gained from visits to the property. One tenant at the site visit said that he had rented a 'studio flat' in good faith and was aggrieved that one of his power points had subsequently been taken out of use. Though this supports the appellant's claim that cooking facilities were removed I find, on the balance of probabilities, that No.9 was not in use as a C4 HMO at the date of the application. Hence this finding casts doubt on the second limb of the appellant's scenario and lends support to the Council's preferred approach.

Is the existing use relevant?

27. The premise underlying the appellant's case is that the existing use is irrelevant because the application was made under S192 of the Act and thus is concerned with future use, not current use. Moreover he says, that regardless of any Enforcement Notice, Section 57(4) of the Act is clear that planning permission is not required for the use for which the property could lawfully have been used if the unlawful development had not been carried out.
28. It is common ground that use of No 9 as a C3 dwelling would not require an express grant of planning permission, but as I have concluded above, it was not in this use on the relevant date. Neither was it in use as a C4 HMO. Hence in either case it cannot, as a matter of fact, benefit from the provisions of Class L. As noted in the extract from a publication by Martin Goodall, submitted as part of the appellant's evidence "there are no other permitted development rights that allow the change of use of a dwelling from Use Class C3 to any other use except C4, and none which allows any other change of use to or from Use Class C4".
29. In this case, I have found, on the balance of probabilities, that the existing use of No. 9 at the time of the LDC application was as self-contained flats. This was unlawful because the flats had no planning permission and the use was the subject of an enforcement notice which has come into force. The appellant suggests that an application for an S192 LDC must be determined in the light of the lawful use of the premises, particularly because it could revert, without any express permission to that use at any stage, but this is an approach which is not supported by the courts.
30. The Supreme Court held in the case of *SSETR v Waltham Forest London Borough Council* [2002] EWCA Civ 330 (*Waltham Forest*) that when, as in the circumstances before me:
1. no permission is needed to move from the existing use, to another use, in this case a C3 dwellinghouse; and
 2. no further permission is needed to move from that use, in this appeal (C3) to the use applied for (C4)
- it is a matter potentially relevant to whether planning permission should be granted.

31. However the Court also held that this 2 stage approach "is a complication not relevant to the exercise under Section 192". Thus whether or not the use was unlawful and could revert to C3 and thence to C4, does not help the appellant because it was not, at the relevant date in C3 or C4 use and thus could not benefit from Class L rights. In these circumstances and with reference to the wording of Section 192, the existing use is highly relevant because this determines whether or not the proposed use can benefit from the permitted development rights of Part L of the GPDO. Whilst the appellant says that this approach is not sensible it falls fairly and squarely in line with that taken by the Supreme Court, the wording of the GPDO and also S192 of the Act. Hence, I favour this third scenario which is supported by the Council's evidence of the use subsisting at the premises on 18 September 2015.

Other matters

32. A number of appeal decisions are relied upon by the appellant, and both parties rely on legal opinions which are concerned with the tests to be applied in assessing whether or not a property is in C4 use. But these appeal decisions, including that submitted by the Council, are all appeals made under Section 174 of the Act and thus are materially different from the LDC appeal before me. Similarly the legal opinions are primarily concerned with the assessment and interpretation of Use Class C4 and thus have limited application in this case. In any event, it is a long established premise that an appeal must turn on its own facts and thus I give these documents little weight.

33. The appellant suggested that the Council's evidence was misconceived and was based on the provisions of Section 191 of the Act. I agree that its evidence appeared muddled at times, and this was accepted by Mr Scott. However I found that its defence of the appeal was comprehensively underpinned by unambiguous and relevant data about the use of the premises at the time of the application. This is, as I have found above, highly relevant to the appeal before me. Whilst this muddled approach may, in other circumstances, have been damaging to the Council's case, I also found that the appellant's evidence was internally contradictory, vague and unspecific. The onus of proof lies firmly on the appellant and to succeed the evidence submitted must be sufficiently precise and unambiguous and I find that this test of the evidence has not been met.

34. Consequently, the proposed change of use of No 9 to a C4 Small HMO with no more than six residents by reason of the limitations of Schedule 2, Part 3, Class L of the GPDO, does not benefit from deemed consent granted by the Development Order.

Decision

35. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed change of use of No 9 to a C4 Small HMO with no more than six residents, was well-founded and the appeal should fail. I therefore exercise the powers transferred to me in section 195(3) of the 1990 Act as amended and uphold that decision. Consequently the appeal is dismissed.


INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Saira Kabir Sheik QC

She called

Alvin Ormonde

Pincus Mann

Proprietor, Planning and Management Services
Property Manager and company Director of
Manlow Development and Manlow Property
Management

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wicks MRTPI

He called

Scott Davies BA

Deputy Planning Enforcement Manager, London
Borough of Brent

DOCUMENTS submitted at the Inquiry

- 1 Statement of Common Ground
- 2 Opening submission on behalf of the appellant.
- 3 *SSETR v Waltham Forest London Borough Council* [2002] EWCA
Civ 330 submitted by the Council

Appeal Decision

Site visit made on 25 January 2018

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2018

Appeal Ref: APP/L5810/C/17/3172432

Land at 67A Hounslow Road, Twickenham TW2 7HA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Ciaran Merrigan against an enforcement notice issued by the Council of the London Borough of Richmond upon Thames.
 - The enforcement notice was issued on 27 February 2017 under ref. 15/0064/EN/EOP.
 - The breach of planning control as alleged in the notice is: "*Without planning permission and within the past 4 years the unauthorised subdivision of a single dwellinghouse into three (3) separate self-contained one (1) x bedroom flats [“the Unauthorised Use”].*"
 - The requirements of the notice are to:
 - i. Cease the Unauthorised Use of the Land as three separate residential units/flats.*
 - ii. Undertake the necessary work to reinstate the Land into a single dwellinghouse.*
 - iii. Make good any damage resulting from compliance with step 5(i) above.*
 - iv. Remove from the Land all surplus materials and debris arising for (sic) the compliance with step 5(i) above.*
 - The period for compliance with the requirements is "*Four calendar months*".
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the text following THE BREACH OF PLANNING CONTROL ALLEGED in paragraph 3 in its entirety and substituting therefor the following text: *Without planning permission the material change of use of a single dwelling house into three separate, self-contained, one-bedroom flats, comprising two such flats on the first floor and one such flat on the second (loft) floor.*
2. To reflect the limited success of the ground (d) appeal/implied ground (f) appeal it is directed that the enforcement notice be varied by deleting all four requirements under WHAT YOU ARE REQUIRED TO DO in paragraph 5 in their entirety and substituting therefor the following three requirements:

(A) Cease the use of the Land as separate self-contained flats, except to the extent that the second (loft) floor may be used as a one-bedroom, separate self-contained flat and the whole of the first floor may be used as a single, separate self-contained flat.

(B) Cease the use of the first floor on the Land as more than one separate, self-contained flat and undertake all necessary work, including the removal of all kitchens on that floor except one, to reinstate the first floor on the Land to one separate, self-contained flat.

(C) Remove from the Land all materials and debris arising from compliance with steps (A) and (B) above.

3. Subject to the correction and variations, the appeal is otherwise dismissed and the enforcement notice is upheld.

Application for costs

4. An application for an award of costs has been made by Mr Ciaran Merrigan against the Council of the London Borough of Richmond upon Thames. This application will be the subject of a separate decision.

Background, matters of clarification and the enforcement notice

5. The appeal concerns a mid-terraced upper floor flat which is now in use as three self-contained flats. The main floor has been divided into two flats. The second (loft) floor contains a further flat.
6. The appellant's evidence on ground (d) is focussed only on part of the property i.e. the flat on the loft floor. The appellant accepts that a breach of planning control has occurred in respect of the two flats on the first floor and that these two flats are not immune from enforcement action in terms of the passage of time. Ground (d) cannot therefore succeed in full. It could succeed partially in respect of the flat on the loft floor and this could equally be categorized as an implied ground (f) appeal in that if the loft flat had accrued lawful rights by the date the enforcement notice was issued the requirement for its cessation of use would be excessive.
7. My decision above corrects paragraph 3 of the notice in order to provide for a more accurate description of the breach of planning control. The parties were given an opportunity to comment accordingly and no objections were raised to the correction. It allows for the inclusion of the phrase "material change of use" instead of the term "subdivision" which is not an act of development. I have omitted any reference to when the breach of planning control occurred since this is already in paragraph 4 of the notice. The word "unauthorised" is also superfluous. The location of the flats is included for greater clarity. Such a correction would not cause any injustice to the parties.

The appeal on ground (d) for the flat on the second (loft) floor

8. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate on the balance of probabilities that at the time the enforcement notice was issued on 27 February 2017, it was too late to take enforcement action against the loft floor flat. Thus, the appellant must show that, by then, the loft floor had been used continuously as one unit of residential accommodation for at least four years. The material date in this case is therefore 27 February 2013. The four-year period begins with the date of the breach commencing; it need not necessarily be the four years immediately prior to the notice being issued.
9. The judgment in *Gabbitas v SSE and Newham LBC* [1985] JPL 630 makes it clear that if the Council has no evidence of its own, or from others, to

- contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss an appeal on ground (d), provided the appellant's evidence alone is sufficiently precise and unambiguous.
10. In deciding when the four-year period begins to run it is necessary to look at the physical works – the date the loft floor was capable of providing the viable facilities required for day-to-day private domestic existence – and at when the use actually commenced. Neither is decisive and it is possible for the change of use to have commenced prior to actual occupation provided the property was capable of being so used.
 11. The appellant has supplied photographs of the loft flat taken in October 2008 together with invoices and/or photographs of the installed facilities in the kitchen, living area and bathroom of that flat. The kitchen area, at least, is not materially different to the one shown in photographs from 2014. Taken together with the statutory declaration from Gearoid Hogan, who was employed as the builder at the property from June 2008 until October 2008, I am satisfied on the balance of probabilities that the space was converted to a loft floor residential flat by November 2008, well before the material date.
 12. In terms of occupation, I have been provided with six statutory declarations made in February and June 2017 by various parties, including the appellant, Gearoid Hogan and former occupiers of the loft floor flat. When read together, these confirm the appellant's version of events that the loft floor flat has been used as a single dwelling house continuously from November 2008 onwards. The statutory declarations are precise and unambiguous. It is appropriate to attach substantial weight to all of the submitted statutory declarations since they appear to have been properly declared and witnessed, such that there could be serious consequences if any of them were shown to be false.
 13. In the light of the above I disagree with the Council's claim that the appellant has been unable to provide any evidence to prove occupancy or continued use throughout the period at issue. As the appellant declares, the evidence from the statutory declarations is unequivocal. The Council does not directly challenge any of the statutory declarations.
 14. The Council asserts that no Council Tax was paid separately in relation to the upper floor flat until 2014/2015. The appellant accepts that position. The Valuation Office Agency contacted the appellant on 15 July 2015 with a view to creating separate Council Tax records for each separate dwelling. Council Tax for the loft floor flat was backdated to December 2014 to coincide with the start of a tenancy agreement. Whilst there is likely to have been a breach of the relevant legislation, in the face of the weight of evidence outlined above, the absence of Council Tax records for the whole period at issue is a factor to which I attach only limited weight. The law does not require a property to be registered for Council Tax before it can be classified as a dwelling.
 15. The Council has interrogated the electoral register and this confirmed there are no records of anybody being registered separately in relation to the second floor flat. However, there may be many reasons why the various residents of the flat appear to have made a conscious choice not to register. The absence of an electoral record for the flat carries little weight.
 16. The lack of separate utility bills for the flat is covered in the appellant's representations. All such bills have been addressed to the appellant since he

acquired an interest in no. 67A in 2003. The appellant finds this practical, especially as it reduces the risk of any arrears being owed to a utility company should any tenant vacate with outstanding bills. The Council Tax bills are all in the appellant's name even though he no longer lives at the property. I note that the tenancy agreement with Mr Michael Potter and Miss Phenpisu Sattruphinat dated 28 December 2014 unambiguously says with regard to rent: "£1,150 per calendar month for rent and bills. Bills included are electricity, water, ground rent, buildings insurance and council tax." The tenancy agreement was submitted in response to the Council's other assertion that tenancy agreements are notably absent. The appellant's own statutory declaration points to the fact that he was resident in the loft floor flat from November 2008 to May 2014; no tenancy agreements would have been drawn up or required for that period.

17. As to other matters that have been brought to my attention I would comment briefly as follows:

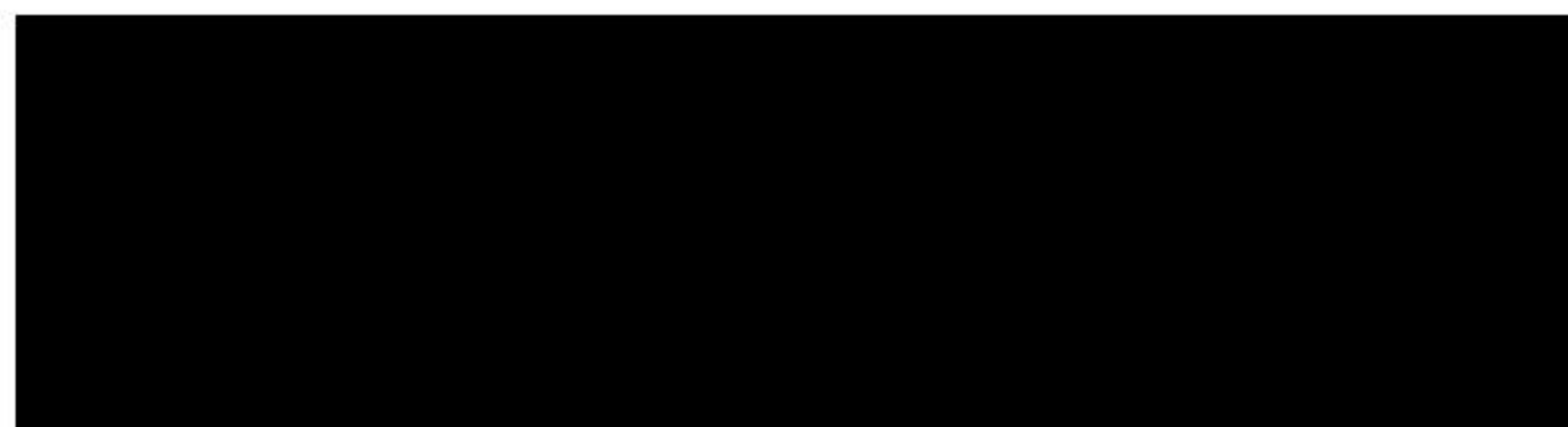
- (i) The Council's written statement does not rely on its investigations in March 2015 when the appellant maintains that the Council's officer was wrong to conclude that no. 67A was being used as a house in multiple occupation.
- (ii) I have not been supplied with any documents which relate to the retrospective planning application ref. 15/5435/FUL. In any event, the focus for the appellant, the Council and the Inspector then would have been on the planning merits of the three flats, rather than on their lawfulness or otherwise.
- (iii) How water is supplied to the flats is a separate private matter and is controlled by other legislation.
- (iv) I have not been provided with any relevant documents which relate to planning application ref. 08/1485/HOT for a rear dormer.
- (v) The lease dated 4 February 2011 (Appendix K of the appellant's statement) is clearly based on a plan which shows all the facilities needed for a separate single dwelling house at the second floor level. It is also said to be a measured survey on the plan.
- (vi) The suitability of the second floor flat as residential accommodation and its status under the building control regulations are not matters which are before me in this appeal. Moreover, even if the appellant's own approved building control inspectors did not certify the completion of the self-containment works to all the flats until September 2015, this does not mean that the second floor flat was not in existence and occupied well before that date.
- (vii) A failure to submit an application for a lawful development certificate cannot be held against the appellant.

18. No enforcement action may be taken after the end of the period of four years beginning with the date of the breach. As a matter of fact and degree, it seems to me on the balance of probabilities that the loft flat had been formed by November 2008, that the loft flat at that time contained the facilities required for day-to-day living and that since November 2008 its use as a flat has continued without any material interruption. Enforcement action against the loft flat could have been taken at any time during the period of four years beginning in November 2008. However, it was not taken until 27 February 2017, by which time it was too late.

19. The appeal on ground (d) partially succeeds insofar as it relates to the second floor (loft) flat, as does the implied appeal on ground (f). I shall vary the requirements of the enforcement notice to take account of this lawful right before upholding the enforcement notice. The wording I have adopted in the decision above concerning replacement requirements (A), (B) and (C) was put to the parties in correspondence after the site visit. No objections were raised by the parties. I consider that the requirements as varied would not result in any injustice to the parties.

The appeal on ground (g)

20. The appellant originally argued that the period for compliance with the requirements of the notice was too short. He requested a period of at least six months. However, I see that in his supplemental appeal statement (final comments), it is accepted that four months is a reasonable time to comply with the enforcement notice. I take that to be his settled position on ground (g). The Council maintains too that a four-month compliance period is reasonable in all respects. I see no basis to disagree, especially as the requirements have now been reduced following my consideration of ground (d). The appeal on ground (g) must therefore fail.

A solid black rectangular box used to redact the signature of the Inspector.

INSPECTOR

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 9th June 2023

Appeal Ref: APP/L5240/X/22/3301847
202-204 St James's Road, Croydon CR0 2BW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Hitesh Patel against the decision of the Council of the London Borough of Croydon.
 - The application, Ref 22/00535/LE dated 10 February 2022, was refused by notice dated 7 April 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is residential use - 8 self-contained flats.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Procedural Matter

2. It was not necessary for me to conduct a site inspection to determine the appeal, with a decision made based on the submitted evidence.

Main Issue

3. The main issue in the appeal is whether or not the Council's decision to refuse the LDC was well-founded.

Reasons

4. Section 191(2) of the Act provides that a use is lawful if no enforcement action may be taken in respect of it. Where there has been a breach of planning control consisting in the change of use of any building(s) to use as a single dwellinghouse (or indeed to use as 8 single dwellinghouses such as the flats in this appeal), no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach¹.
5. The LDC application was made on 10 February 2022. Accordingly, for success in the appeal, the burden of proof is upon the appellant to demonstrate that the use has occurred continuously since at least 10 February 2018 (the relevant date).
6. In line with well-established planning law², as the Council has not submitted any evidence of its own (or from others) to contradict or otherwise make the

¹ Section 171B(2) of the Act.

² Gabbittas v SSE and Newham LBC [1985] J.P.L. 630)

appellant's version of events less than probable, there shall be no good reason for me to dismiss the appeal provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

7. A statutory declaration has been made by the appellant, as joint owner of the appeal properties, which states unambiguously that the 8 flats were created in 2009 and they have been let continuously since 2010 (apart from short vacancies between tenancies while new tenants were sought and general decoration between tenancies). This statutory declaration represents sworn first-hand evidence made under the provisions of the Statutory Declarations Act 1835 and witnessed by and signed in the presence of a solicitor. Accordingly, I give its contents significant weight – particularly as what is said is supported by extensive evidence including a signed letter from a firm of chartered accountants as well as persuasive photographs indicating the said use over the chronology outlined. Substantial amounts of tenancy and council tax documentation has also been submitted in relation to the residential use of the 8 flats which in my view sufficiently demonstrates continuity of the said use with a commencement well before the relevant date.
8. The suggested gaps in continuity raised by the Council in relation to some council tax documents have been adequately explained by the appellant in the context of the short periods between tenancies dealt with in his statutory declaration - which I do not regard to be interruptions in the use for which the LDC is sought. Moreover, when the council tax documentation is considered together with associated tenancy documents it is clear that there has been, as a matter of fact, continuity of residential use for all 8 properties for a sufficient time to acquire immunity from enforcement.
9. The appellant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of residential use - 8 self-contained flats - was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.


INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 10 February 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action may be taken in respect of it, as the time for action had expired under the provisions of section 171B(2) of the Act.

Signed



Inspector

Date: 9th June 2023

Reference: APP/L5240/X/22/3301847

First Schedule

Residential use - 8 self-contained flats.

Second Schedule

Land at 202-204 St James's Road, Croydon CR0 2BW

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 9th June 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

Land at: 202-204 St James's Road, Croydon CR0 2BW

Reference: APP/L5240/X/22/3301847

Scale: Do not scale

