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Via Planning Portal Only

29th January 2024

Dear Sir/Madam

CERTIFICATE OF LAWFUL DEVELOPMENT (EXISTING) WITH RESPECT TO THE LAWFUL EXISTING C3 USE FLATS 1 – 19 AT NO. 10 LYMINGTON ROAD, WESTHAMSTEAD, LONDON, NW6 1HY.

This is an application under Section 191 (1) (b) of the Town and Country Planning Act 1990 to obtain a Lawful Development Certificate to confirm that the lawful existing C3 use of the 19 existing flats at no. 10 Lymington Road. The existing flats are lawful by virtue of the residential use having taken place for a period in excess of 4 years, prior to the date this application was made.

The following documents are submitted in support of the application:

- Completed application form;
- Site location plan;
- Energy performance certificates for each of the flats;
- Valuation Officer records of the Council tax banding for each of the flats;
- Gas safety certificates for each of the flats;
- Fire Plan for the flats;
- Tenancy agreements for each of the flats;
- Plans showing the layout of the existing flats.

Supporting Evidence:

- Appendix 1 – Energy Performance Certificates for each of the flats dated 20th of November 2017.
- Appendix 2 – Valuation Office records of Council tax banding dated February 2015, December 2015 and January 2016.
- Appendix 3 – Gas safety certificates for the buildings plant for the years 2018 – 2023.
- Appendix 4 – Fire Plan for the flats dated July 2019.
- Appendix 5 – Tenancy agreements for each of the flats from between 2019 and 2024.
- Appendix 6 – Plans showing the existing internal layout of the building.

The Site

The site is located on the southern side of Lymington Road between the junctions with West End Lane and Crediton Hill. The site comprises a 4 storey semi-detached building (including lower ground floor and rooms in the roof) that has been subdivided into a total of 19 flats. This includes 5 flats at lower ground floor level, 5 flats at ground floor level, 5 flats at first floor level and 4 flats at second floor level. The site is on a street comprised of similar residential properties.

Planning History

On the 30th of March 2020, planning permission was granted (reference 2019/6036/P) for the erection of a single storey outbuilding in the rear garden for ancillary residential purposes.

On the 29th of January 2015, planning permission was granted (reference 2015/0398/P) for the erection of a part single and part two storey rear extension to flats, installation of rooflights to flat 3 and works to the front and rear lightwells.

On the 4th of April 2014, planning permission was granted (reference 2014/2426/P) for change of use of flat 4 from a self contained flat (C3) to a self contained 2 room HMO (C4).

Legislative Background and Guidance

Section 191 of the Town and Country Planning Act 1990 (as amended)

Section 191 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) allows applications to a Local Planning Authority for the issue of Certificates of Lawful Use or Existing Development. This provides a statutory mechanism for obtaining confirmation that an existing use of land, operational development, or activity in breach of a planning condition, is lawful and consequently immune from enforcement action.

Section 171B(1) of the Town and Country Planning Act 1990 (as amended)

Section 171B(1) of the Town and Country Planning Act provides for the 'four year rule' in respect of operational development. It states:

(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 four years beginning with the date of the breach.

Therefore, if it can be demonstrated that the works were substantially completed more than four years prior to the submission of this certificate application, then the development is lawful, and a certificate should be issued.

Planning Practice Guidance Paragraph 009

Planning Practice Guidance at paragraph 009 (Reference ID: 17c-009-20140306), states:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process."

In light of the above, a certificate of lawful use or existing development is not a planning permission. The planning merits of the use, operation or activity in the application are not therefore relevant and planning policies are thus not applicable. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The test in this instance is whether 'on the balance of probability' the applicant has demonstrated that the development was carried out and substantially completed more than four years prior to the submission of this certificate application.

The lawfulness of the existing development

As outlined above, the application is not to be considered against local or national planning policy. The question to ask is whether the applicant has demonstrated, on the balance of probability, that the development occurred more than four years prior to the submission of this certificate application.

The 'balance of probability' threshold was previously set out in Circular 10/97 (now cancelled), but that threshold is repeated in current Planning Practice Guidance. Further, case law dictates that an applicant's own evidence does not need to be corroborated by "independent" evidence to be accepted (*FW Gabbitas v SSE and Newham LBC* [1985] JPL 630). If the local planning authority has no evidence of its 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, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability."

The works to convert no.10 Lymington Road into 19 flats were completed in April 2015. Since completion of the conversion works, the flats have been continuously occupied by tenants other than short breaks between tenants vacating and new tenants occupying the properties and breaks to allow flats to be refurbished. Based on the evidence available it can be demonstrated, on the balance of probability, that the development occurred in excess of four years prior to the submission of this application. The following provides a summary of the evidence submitted in support of the application.

Energy Performance Certificates have been provided for each of the 19 flats dated November 2017 (**Appendix 1**). Valuation Office records have been submitted showing the Council tax banding for each of the residential flats dated 2015 and 2016 (**Appendix 2**). Gas Safety Certificates have been provided for the buildings plant dated between 2018 and 2023 (**Appendix 3**). A Fire Plan for the flats has been provided dated 2019 (**Appendix 4**). Tenancy Agreements have been provided for each of the flats between 2019 and 2024 (**Appendix 5**). Appendix 6 contains plans showing the existing layout of the flats.

Summary & Conclusion

The evidence submitted demonstrates that 19 existing flats at no.10 Lymington Road have existed in residential use for more than four years before the submission of this lawful development certificate application.

Accordingly, the requirements of s.191(2)(a) are satisfied (lawfulness through expiry of time), and any refusal from the Council would be unfounded. It is therefore respectfully requested that a certificate is issued.

I trust the commentary above is clear but please do not hesitate to contact me if you have any queries or if I can offer any further points of clarification.

Yours faithfully



Stuart Minty
Director
SM Planning