

TOWN AND COUNTRY PLANNING ACT 1990

24 HOLMDALE ROAD, LONDON, NW6 IBL

APPLICATIONS FOR CERTIFICATES OF
LAWFULNESS BY MS P WRIGHT FOR:

1. THE EXISTING USE OF THE BASEMENT AS
A SELF CONTAINED FLAT WITHIN USE
CLASS C3
2. THE PROPOSED USE OF THE GROUND,
FIRST AND SECOND FLOORS AS A SINGLE
DWELLINGHOUSE WITHIN USE CLASS C3

SUPPORTING STATEMENT IN RESPECT OF
BOTH APPLICATIONS

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HOLMDALE ROAD STATEMENT

A THE APPLICATION SITE

THE PROPERTY

- A1 No 24 Holmdale Road dates from the Victorian period, with accommodation on four floors, comprising a basement, ground, first and second (loft) floors.

BACKGROUND

- A2 The applicant acquired the property on 19 February 1992. On moving in, she occupied it as her main residence, and began making alterations and renovations. After she moved out of the property in 2000, she let the basement flat to a single tenant as a separate dwelling from the upper floors, which were let to 6 tenants as a single household. Apart from routine maintenance and decoration, no further works have taken place to the property since that date, and the two distinct parts of the property have remained in the same separate uses.
- A3 The Council's housing department licensed both parts of the property as an HMO on 22 August 2008.

B THE EVIDENCE

- B1 The evidence submitted with these applications is contained in appendices 1-47 to this statement.

C THE BASEMENT

LAWFULNESS

- C1 A certificate is sought for the existing use of the basement as a self contained flat within use class C3 (dwellinghouses). The flat comprises the following accommodation: a studio room, a small kitchen, a bathroom and a WC.
- C2 By virtue of section 191(2) of the Town and Country Planning Act, 1990, uses and operations are lawful if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force.

The Immunity Rules

- C3 Section 171B of the Town and Country Planning Act, 1990 grants immunity from enforcement action (and thus lawfulness for planning purposes), as follows:
- (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 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 four years beginning with the date of the breach.*
 - (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.*

The Concept of a Dwellinghouse

- C4 'Dwellinghouse' is not comprehensively defined under planning legislation, and is a concept both of design and use.
- C5 Circular 10/97 'Enforcing Planning Control' (para 2.81) states that:
- 'It is important to distinguish the term "use as a single dwellinghouse", in section 171B(2), from what might normally be regarded as being a single dwellinghouse. Experience has suggested that, on occasion, people may adapt, or use, unlikely or unusual buildings or structures as their home or dwellinghouse. However, the Courts have held that,*

*although there is no definition of what is a dwellinghouse, it is possible for the reasonable person to identify one when he sees it. If no reasonable person would look at a particular structure used as a dwellinghouse and identify it as such, it is justifiable to conclude, as a matter of fact, that it is not a dwellinghouse. In those circumstances, while its use as a dwellinghouse might be immune from enforcement action, it is not a dwellinghouse as such and, accordingly, would never enjoy the benefits of "permitted development" rights under Article 3 of, and Part 1 of Schedule 2 to, the GPDO. The Department considers that a flat may be used as a single dwellinghouse in certain circumstances, but not acquire GPDO "permitted development" rights as such, because Article 1(1) of the GPDO specifically excludes them from the definition of a "dwellinghouse" for GPDO purposes. For the purposes of the 1990 Act, where section 336(1) defines "building" as including any part of a building, the view is taken that a flat can be used as a single dwellinghouse, whether or not it would otherwise be regarded as being a single dwellinghouse as such, (see *Doncaster MBC v. Secretary of State for the Environment and Dunnill* [1993] J.P.L. 565). It is considered that the criteria for determining use as a single dwellinghouse include both the physical condition of the premises and the manner of the use. Where a single, self-contained set of premises comprises a unit of occupation, which can be regarded as a separate "planning unit" from any other part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse; and are used as a dwelling, whether permanently or temporarily, by a single person or more than one person living together as, or like, a single family, those premises can properly be regarded as being in use as a single dwellinghouse for the purposes of the Act. This interpretation would exclude such uses as bed-sitting room accommodation, where the occupants share some communal facilities within a building, such as a bathroom or lavatory, and the "planning unit" is likely to be the whole building, in use for the purposes of multiple residential occupation, rather than each individual unit of accommodation'.*

- C6 Any reasonable person looking at the studio flat the subject of this application, would as result of both its physical attributes and the purpose to what it has been put, clearly recognise it as a dwellinghouse.
- C7 In this case, both the physical condition of the premises and the manner of its use clearly indicate that the building is a dwellinghouse. It is a single, self-contained set of premises comprising a unit of occupation, forming a separate planning unit, and which is designed for residential purposes. It contains all the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse and it is used as a dwellinghouse, on a permanent basis. Therefore, according

to the circular criteria, it can properly be regarded as being in use as a single dwellinghouse for the purposes of the Act.

- C8 It is accepted that the kitchen facilities provided in the flat are basic. However, this does not mean that it does not qualify as a dwellinghouse.
- C9 In *Gravesham BC v. Secretary of State for the Environment (1984)*, McCullough J. observed: '*In using a simple word in common usage and leaving it undefined, Parliament realistically expected that, in the overwhelming majority of cases, there would be no difficulty at all in deciding whether a particular building was or was not a dwellinghouse*'. In the same case McCullough J. also suggested that the common feature of all premises which could ordinarily be described as dwellinghouses was that they were buildings which ordinarily afford the facilities required for day-to-day private domestic existence. That characteristic was lacking in hotels, holiday camps, hostels, residential schools, and naval and military barracks. But it was present in houses, which were used as second homes, or houses, which were empty pending sale or because they were undergoing extensive repairs, or because they could not lawfully be used, or timeshare holiday cottages. The basement flat clearly affords the facilities required for day-to-day private domestic existence.
- C10 Indeed, in the Gravesham case the court found that a small holiday chalet (20 feet by 17 feet) comprising a living room, kitchen and bedroom did constitute a dwellinghouse, notwithstanding that there was no bathroom or WC, because it could reasonably be said to provide for the main activities of day to day existence. The basement flat has all these facilities and more.
- C11 Therefore, having regard to the facts of this case and the above authorities, it is clear that the basement flat is a dwellinghouse in planning terms.

Period of Use

- C12 In order for the use of the basement as a self contained flat within use class C3 to be lawful, it must have been used continuously for that purpose for a period exceeding four years ending with the date of this application.

Interpretation of the Evidence

- C13 Appendix 37 is the statutory declaration (SD) of the applicant. This clearly refers to the flat being formed by September 2000 and that the property has remained in that condition to the present day.

- C14 Appendix 38 is the SD of the occupier of the flat (since March 2005). This confirms that she has had exclusive use of the flat and all its facilities since that time until the present.
- C15 The flat has been the subject of separate tenancy agreements dated 5 March 2005 (appendix 4), 5 March 2006 (appendix 7), 5 March 2007 (appendix 10), 5 March 2008 (appendix 14) and 10 December 2011 (appendix 23).
- C16 The occupier of the basement studio flat was included on the main house lease on a number of occasions between 10 February 2009 and 10 April 2011 (Appendices 17-21). However, this was solely in order to reflect a proposed facilities sharing arrangement designed to meet the Council's HMO registration requirements, but which in fact never occurred in practice. The proposed arrangement was that the basement studio tenant be permitted the use of the ground floor kitchen and that the tenants resident on the upper floors could use the basement wc (see appendix 32). However, as confirmed by both SDs (appendices 37 and 38) both parts of the house continued in separate occupation with no sharing of facilities between the basement and the upper floors.
- C17 Appendix 40, the draft SD of a former upstairs tenant until 2010, confirms that the proposed sharing arrangement never occurred.
- C18 The other documentary evidence also refers or alludes to the basement studio flat being in separate occupation from 2002 until 2012, this being:
- | | |
|-------------------|---|
| 18 October 2002 | Appendix 24 |
| 6 January 2003 | Appendix 25 |
| 11 September 2007 | Appendix 26 (Page 13) |
| 22 August 2008 | Appendix 29 (Schedule, page 1) |
| 12 November 2008 | Appendix 30 (This letter refers to the main house and is not signed by the occupier of the basement flat). |
| 19 January 2009 | Appendix 31 (Paragraphs 1 and 2) |
| 4 August 2009 | Appendix 34 (The applicants handwritten note dated 26 August refers to a 'basement studio') |
| 28 January 2010 | Appendix 35 (Page 1 point 5 refers to 'a single let basement studio with their own exclusive (but not ensuite) facilities'). (Also on page 1 of the schedule) |
| 24 May 2012 | Appendix 36 (Page 1 of the schedule). |

- C19 Therefore, there is overwhelming evidence to show that the basement has been used continuously as a self contained flat within use class C3 from September 2000 until the present.

CONCLUSIONS

- C20 The use of the basement as a single dwellinghouse began more than four years before the date of this application, and is therefore lawful.

D THE GROUND, FIRST AND SECOND FLOORS

LAWFULNESS

- D1 A certificate is sought for the proposed use of the ground, first and second floors (currently in lawful use as a HMO within use class C4) as a single dwellinghouse within use class C3.
- D2 It is submitted that the proposed use would be lawful as the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 permits a change from class C4 to class C3 without the need for a planning application.
- D3 This position is dependent on the lawfulness of the current use of the ground, first and second floors as a HMO within use class C4.
- D4 By virtue of section 191(2) of the Town and Country Planning Act, 1990, uses and operations are lawful if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force.

The Immunity Rules

- D5 Section 171B of the Town and Country Planning Act, 1990 grants immunity from enforcement action (and thus lawfulness for planning purposes), as follows:
- (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 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 four years beginning with the date of the breach.*
 - (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.*

Period of Use

- D6 In order for the use of the ground, first and second floors as a HMO within use class C4 to be lawful, it must have been used continuously

for that purpose for a period exceeding ten years ending with the date of this application.

- D7 At the time the HMO was formed in 2000, the ground, first and second floors commenced use as a dwellinghouse by not more than 6 residents living together as a single household within the old use class C3(b) of the Town and Country Planning (Use Classes) Order 1987.
- D8 The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 introduced the class C4 use in April 2010, at which time the ground, first and second floors ceased to be in (the former) class C3(b) use and became a class C4 use, which persists to the present day.

Interpretation of the Evidence

- D9 The formation of the HMO use in 2000 is confirmed by the applicant's SD (Appendix 37), and is corroborated by the SD from a former tenant of the upstairs unit (appendix 39). These documents, along with the further draft SD at appendix 40 (from another 'upstairs' tenant), confirm the existence of the (former) class C3(b)/class C4 use until the present time. At no time do these SDs refer to more than six persons resident on the upper floors.
- D10 There are a number of tenancy agreements dating from 10 November 2002 until 10 December 2011 that confirm the shared occupation of the upper floors by no more than six persons. (Appendices 1-3, 5-6, 8-9, 11-13 and 15-22). It is noted that appendices 17-21 include the occupier of the basement studio flat, and the administrative reason for this is explained in paragraph C16 above. This tenant never occupied the upper floors, nor used any of the facilities in the rooms on them.
- D11 The other documentary evidence also refers to the upper floors being occupied communally by no more than six persons, from 2007 until 2012, this being:

11 September 2007	Appendix 26 (Page 13 refers to six rooms)
27 January 2008	Appendix 27 (refers to six rooms)
23 July 2008	Appendix 28 (Refers to six rooms. The second page states ' <i>I currently let the main house to a group of six young professionals as a single household...</i> ' and ' <i>...have never had more than six tenants sharing the upstairs of the house</i> ')
22 August 2008	Appendix 29 (Page 1 of the Schedule refers to 6 ' <i>bedsits</i> ' with 6 occupiers)
12 November 2008	Appendix 30 (This letter refers to the main house and is signed by six tenants)

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19 January 2009	Appendix 31 (Paragraphs 2 and 8)
4 August 2009	Appendix 34 (The applicants handwritten note dated 26 August refers to 6 rooms)
28 January 2010	Appendix 35 (Page 1 of the Schedule refers to 6 ' <i>bedsits</i> ' with six occupiers)
24 May 2012	Appendix 36 (Page 1 of the Schedule refers to 6 ' <i>bedsits</i> ' with six occupiers).

- D12 The upper floors have never been let out on a room by room basis, but always on a single contract to a group of people who are involved in choosing their own new housemate to share with when somebody moves out.
- D13 Therefore, there is overwhelming evidence to show that the upper floors of the property have been occupied by up to six persons continuously from September 2000 until the present.

CONCLUSIONS

- D14 The use of the ground, first and second floors as a HMO within use class C4 began more than 10 years before the date of this application and it is therefore the current lawful use of the property.
- D15 The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 permits a change from class C4 to class C3 without the need for a planning application and therefore a C3 use would be lawful.

E APPENDICES

Tenancy Agreements

1. Tenancy Agreement dated 10.11.2002
2. Tenancy Agreement dated 10.08.2003
3. Tenancy Agreement dated 10.10.2004
4. Tenancy Agreement dated 05.03.2005 (Studio)
5. Tenancy Agreement dated 12.03.2005
6. Tenancy Agreement dated 10.10.2005
7. Tenancy Agreement dated 05.03.2006 (Studio)
8. Tenancy Agreement dated 10.09.2006
9. Tenancy Agreement dated 10.11.2006
10. Tenancy Agreement dated 05.03.2007 (Studio)
11. Tenancy Agreement dated 10.03.2007
12. Tenancy Agreement dated 10.07.2007
13. Tenancy Agreement dated 10.09.2007
14. Tenancy Agreement dated 05.03.2008 (Studio)
15. Tenancy Agreement dated 10.03.2008
16. Tenancy Agreement dated 10.05.2008
17. Tenancy Agreement dated 10.02.2009
18. Tenancy Agreement dated 10.05.2009
19. Tenancy Agreement dated 10.05.2010
20. Tenancy Agreement dated 10.01.2011
21. Tenancy Agreement dated 10.04.2011
22. Tenancy Agreement dated 10.12.2011
23. Tenancy Agreement dated 10.12.2011 (Studio)

Other Contemporary Documents

24. CCT Design and Build Letter dated 18.10.2002
25. Capita McLarens Letter dated 06.01.2003
26. HMO Licence Application dated 11.09.2007
27. Applicant's Letter dated 27.01.2008
28. Applicant's Letter dated 23.07.2008
29. HMO Licence dated 22.08.2008
30. Tenants' Letter dated 12.11.2008
31. Leasehold Valuation Tribunal Decision 19.01.2009
32. Applicant's Letter dated 19.07.2009
33. Local Authority Letter dated 22.07.2009
34. Local Authority Letter dated 04.08.2009
35. HMO Licence Variation dated 28.01.2010
36. Local Authority Letter dated 24.05.2012

Statutory Declarations

37. Pembe Frances Wright
38. Angela Antonatos
39. Denis Adam Wright
40. Oliver Kampshoff (draft)

Letters and Emails

- 41. Jeshna Tattea
- 42. Linda Murray
- 43. Amanda Rayner
- 44. David Gold
- 45. Ravi Sawhney
- 46. Sally Wright
- 47. 6 x Various
- 48. Anke Middelschulte