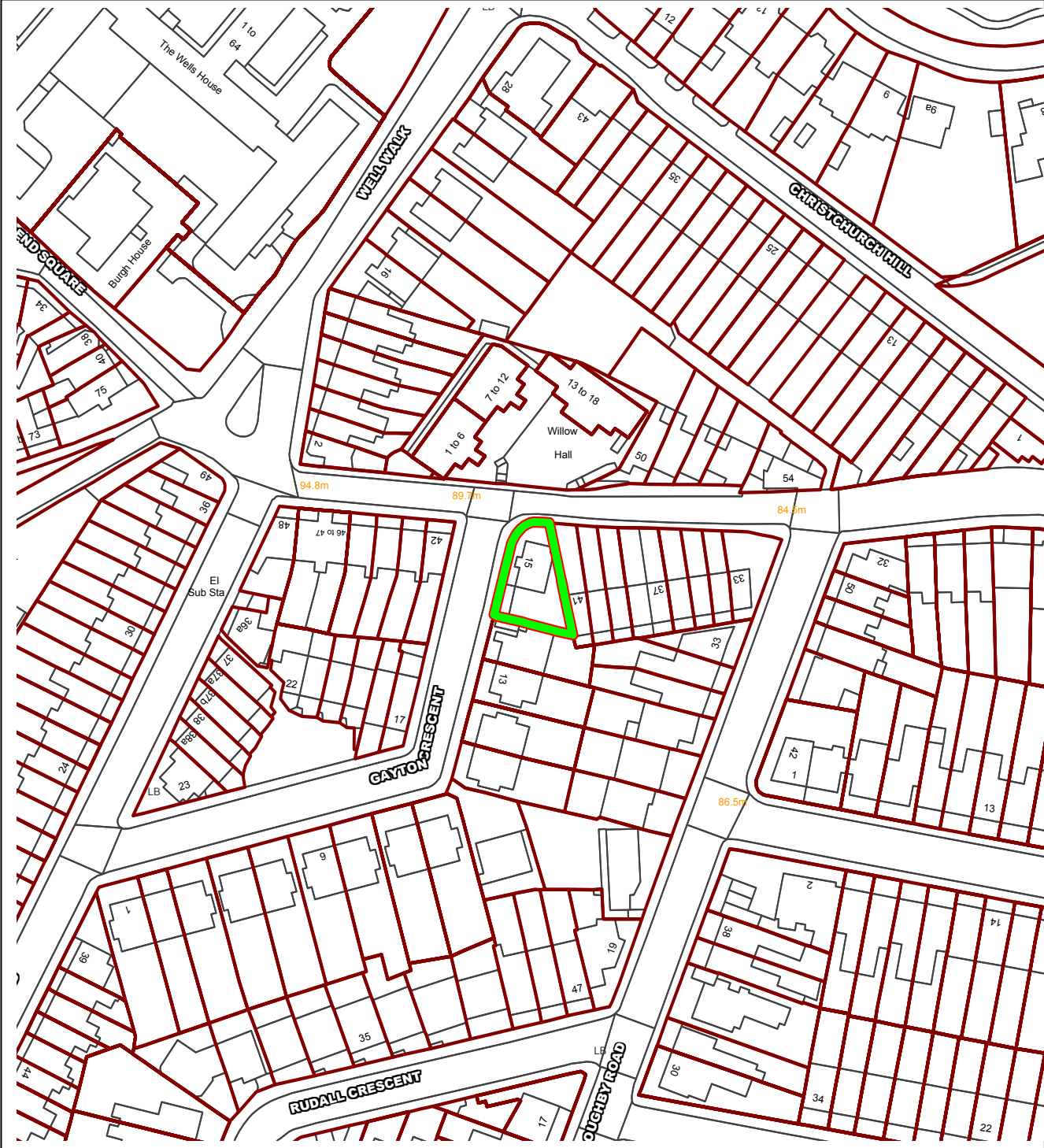


**2014/0968/P – 15 GAYTON CRESCENT**



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**2014/0968/P – 15 GAYTON CRESCENT**



Area of previous railings



**Front elevation of application site showing removed railings to corner of Gayton Crescent and Willow Road (photos taken July 2014)**



**Photo showing space to front garden being used for car parking (taken April 2014)**



**Photo showing railings in situ (taken from previous planning application on property in June 2006)**



Google streetview photograph from June 2008 showing railings to north-west corner in situ (NB taken from neighbours' submission)

<b>Delegated Report</b>		<b>Analysis sheet</b>		<b>Expiry Date:</b>		<b>02/04/2014</b>	
<b>(Members' Briefing)</b>		N/A		<b>Consultation Expiry Date:</b>		20/03/2014	
<b>Officer</b>				<b>Application Number(s)</b>			
Neil Quinn				2014/0968/P			
<b>Application Address</b>				<b>Drawing Numbers</b>			
15 Gayton Crescent London NW3 1TT				Refer to decision notice			
<b>PO 3/4</b>		<b>Area Team Signature</b>		<b>C&amp;UD</b>		<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>							
Removal of iron railings to north-western corner of property (junction between Gayton Crescent and Willow Road).							
<b>Recommendation(s):</b>		Grant certificate					
<b>Application Type:</b>		Certificate of Lawfulness (Existing)					

<b>Conditions or Reasons for Refusal:</b>	<b>Refer to Decision Notice</b>					
<b>Informatives:</b>						
<b>Consultations</b>						
<b>Adjoining Occupiers:</b>	No. notified	<b>28</b>	No. of responses	<b>19</b>	No. of objections	<b>19</b>
			No. electronic	<b>00</b>		
<b>Summary of consultation responses:</b>	<p>Annex 8: lawfulness and the Lawful Development Certificate of the DCLG circular 10/97 provides guidance on when it is appropriate to consult on such applications. Section 8.34 of this guidance states that <i>“if the LPA consider that a person with a legal interest in the land or a neighbour may be able to disprove a claim made in an application, it is open to them to canvass that evidence, if they wish, before determining the application”</i>.</p> <p>As outlined in the planning history section above, there have been a number of recent LDC applications submitted on the site in relation to works to the rear of the property. Neighbouring occupiers were consulted in this instance, and the evidence they put forward was crucial to the LPA’s final decision to refuse the applications. Therefore the LPA considered it is justifiable to consult on this current application.</p> <p>Site notice: 26/02/2014 to 19/03/2014  Press notice: 27/02/2014 to 20/03/2014</p> <p>A detailed submission was received on 16<sup>th</sup> January 2014, signed by a total of <u>19 occupiers of the following properties:</u></p> <ul style="list-style-type: none"> <li>- 5 Gayton Crescent (x2);</li> <li>- 17 Gayton Crescent (x2);</li> <li>- 18 Gayton Crescent (x2);</li> <li>- 19 Gayton Crescent;</li> <li>- 22 Gayton Crescent (x2);</li> <li>- 37 Gayton Road (x2);</li> <li>- 34 Willow Road;</li> <li>- 37 Willow Road (x2);</li> <li>- 38 Willow Road;</li> <li>- 40 Willow Road (x2);</li> <li>- 41 Willow Road (x2)</li> </ul> <p>This 26-page document (plus annexes) discusses at length the reasons why the certificate should not be granted. To summarise, the main points raised are:</p> <ul style="list-style-type: none"> <li>• The railings in question were shown in position on drawings marked as ‘existing’ on the certificate of lawfulness application submitted in relation to extensions to the rear of 15 Gayton Crescent on 30<sup>th</sup> September 2008;</li> <li>• No evidence has been submitted by the applicant to demonstrate that removal of the railings took place before 30<sup>th</sup> September 2008 – only reference to correspondence from the Council’s Planning Enforcement team – therefore the 1995 General Permitted Development Order (GPDO) cannot apply;</li> </ul>					

- However if the 1995 GPDO does apply, it is argued that the simple 'removal' of the railings isn't allowed as set out under Class A, Part 2 of the legislation;
- Part 2, Class A.1 (d) refers to means of enclosure surrounding the curtilage of a listed building – although the application site itself is not listed, Willow Cottages are;
- If the GDPO 1995 (2008) is relevant, the removal of the railings would not constitute permitted development because there is no provision for changes to front boundary treatment in conservation areas under this amended legislation;
- The applicant has not put forward any evidence to demonstrate the railings were removed in their entirety by 13<sup>th</sup> October 2008 – therefore it cannot be said the works benefit from the 'four-year rule';
- It is unclear what works are claimed to be complete, since no photographic evidence has been submitted, and the drawings are 'derisory'.

**Officer comments:** The contents of this submission are discussed in depth below in section 3 of the report.

A separate submission was also received from the **occupier of 34 Willow Road** on the following grounds:

- The railings have been removed to facilitate off-street parking, which given the location on the corner of Willow Road and Gayton Crescent, a highly busy junction used by schoolchildren, would be highly dangerous and constitute an unacceptable risk;
- The original railings should be re-instated.

**Officer comment:** The application for a certificate of lawfulness is assessed on legal grounds; the planning merits of the case cannot be considered.

**CAAC/Local groups  
comments:**

**Heath and Hampstead Society:** This is the sixth application over past two years on the property, all of which relate to repeated attempts by the applicant to defend/justify unacceptable and unapproved development on this prominent site in the centre of Hampstead.

Enforcement action must be taken to rectify multiple infringements, of which the removal of boundary fencing is one. Please refuse and enforce.

**Officer comment:** The application for a certificate of lawfulness is assessed on legal grounds; the planning merits of the case cannot be considered. Where possible, the Council will act to take enforcement action.

**Gayton Residents' Association:** Without seeking prior approval from Camden Planning, the developer has previously chosen to remove the railings and form a cross-over to permit parking in the front garden area, removing an established holly tree, plants and bushes in the process.

The non-permitted loss of historic railings, low walls and garden area has been to the detriment of the Conservation Area. These aspects contribute importantly to the local amenity and character of the streetscape.

The developer has created a cross-over and hard-standing at the corner of 2 busy narrow streets without due process. These pavements are used by many schoolchildren (accessing New End School from South End Green) and other local residents. The location of this cross-over is dangerous.

Ask for application to be refused and enforcement action taken to re-instate railings.

**Officer comment:** The application for a certificate of lawfulness is assessed on legal grounds; the planning merits of the case cannot be considered. Where possible, the Council will act to take enforcement action.

**Pilgrim's to Willoughby Residents' Association:**

**Objection** to loss of original railings (impact on conservation area) and use of front garden as parking space. Request enforcement action and re-instate railings.

**Officer comment:** The application for a certificate of lawfulness is assessed on legal grounds; the planning merits of the case cannot be considered. Where possible, the Council will act to take enforcement action.



## Site Description

A detached basement 3-storey building located on the south side of Gayton Crescent at the junction with Willow Road. The host building is surrounded by garden amenity space, the largest located on the south side adjacent to No.14 Gayton Crescent and No.41 Willow Road. The building has lightwells at the front in common with other dwelling houses on the south side of Gayton Crescent. The building's brick surface has white painted finish similar to others in the locality. The building is not listed but is in the Hampstead Conservation Area and building numbers 1-15 are identified in the Hampstead Conservation Area Statement as making a positive contribution to the character and appearance of the Hampstead Conservation Area.

To its east lies Nos.33-41 Willow Cottages a detached terrace of 2-storey houses with painted and rendered finish. These buildings are listed.

## Relevant History

### 1. 2013/7388/P, 2013/7395/P and 2013/7485/P

Three existing certificate of lawfulness applications for rear extensions refused on 4<sup>th</sup> March 2014. Enforcement notices issued on 5<sup>th</sup> March 2014 seeking removal of unauthorised extensions.

**Appeals have been lodged against these decisions and are due to be heard at a public inquiry in November 2014.**

### 2. 2013/3031/P

Application refused on 4<sup>th</sup> June 2013 by the Development Control Committee (DCC) for the erection of a two storey side extension on south side, including erection of a new bay window plus new access with balcony and stone coping on north side; and erection of single-storey lean-to extension at lower ground level rear to an existing dwelling house (Class C3). The reason for the refusal was:

- *The proposed extensions, by virtue of their scale, location and design would result in the loss of the visual gap between the property and No 14 Gayton Crescent, harmful to the symmetry and character of the host building, the character and appearance of the Hampstead Conservation Area, and the setting of the grade II listed buildings to the rear in Willow Road, contrary to policies CS14 (promoting high quality places and conserving our heritage), DP24 (securing high quality design) and DP25 (conserving Camden's heritage) of the London Borough of Camden Core Strategy and Local Development Framework Development Policies.*

**An appeal has been lodged against this decision and is due to be heard at a public inquiry in November 2014.**

### 3. 2012/0529/P

Application withdrawn in April 2012 for the erection of a two storey side extension, a single storey front extension at lower ground level, and a new bay window with a balcony above to an existing dwelling house (Class C3).

### 4. 2008/4730/P

Certificate of Lawfulness (Proposed) refused on 24<sup>th</sup> December 2008 for the erection of a basement, ground and first floor rear extension to single dwellinghouse (Class C3) for the following reasons:

- *The proposed rear extension would be more than one storey and would be within seven metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse. It therefore fails to comply with Class A.1 (f) (ii) of the Town and Country Planning (General Permitted Development Order 1995 as amended by Amendment) (No.2) (England) Order 2008.*

- *The enlarged part of the dwellinghouse would have more than one storey and extend beyond the rear wall of the original dwellinghouse. It therefore fails to comply with Class A.2 (c) of the Town and Country Planning (General Permitted Development Order 1995 as amended by (Amendment) (No.2) (England) Order 2008.*

### 5. 2008/3188/P

Certificate of Lawfulness (Existing) granted on 19<sup>th</sup> October 2008 for the erection of two single storey ground floor level extensions to the rear of the single dwellinghouse.

**6. 2006/2929/P**

Application granted on 4<sup>th</sup> September 2006 for the change of use of basement from residential dwelling (Class C3) to nursery school (Class D1) and associated minor works.

**7. E7/11/30/15010**

Application refused on 19<sup>th</sup> February 1973 for the erection of a two-storey side extension at No. 15 Gayton Crescent, N.W.3, and the provision of a vehicular means of access to the highway.

**8. E7/11/30/13331**

Application refused on 9<sup>th</sup> June 1972 for the erection of a two storey side extension at No 15 Gayton Crescent N.W.3. and means of access to the highway.

**Relevant enforcement history**

**1. EN08/0779**

*Alleged breach: Fence removed and used as a parking space*

**Case closed 29/09/2008:** No breach found (removal of railings and creation of off-street parking are permitted development).

**2. EN10/0856**

*Alleged breach: Demolition of wall at front/side of property to create permanent parking space*

**Case closed 10/08/2012:** wall demolished was less than 1m in height, therefore conservation area consent not required and no breach of planning has occurred. However Planning Contravention Notice served regarding provision of off-street parking.

**3. EN13/1075**

*Alleged breach: Removal of front boundary treatment (NB not subject of this application)*

**Enforcement notice took effect on 14/07/2014** requiring front boundary wall and railings to be reinstated as previous within two months.

**Relevant policies**

Not applicable, although reference made to guidance contained within Annex 8 of Circular 10/97: 'Lawfulness and the Lawful Development Certificate'.

## Assessment

### 1.0 Proposal

- 1.1 The application is made on the basis that the removal of the railings to the north-western corner of the property, on the junction of Gayton Crescent and Willow Road, is lawful, meeting the relevant tests set out in section 191 of the Town and Country Planning Act 1990, for the following reasons:
- The removal of this part of the boundary would constitute permitted development as set out under Schedule 2, Class A, Part 2 of the General Permitted Development Order (GPDO) 1995 (2008);
  - The works were completed more than four years ago, and are therefore immune from enforcement action.
- 1.2 The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12).
- 1.3 The relevant test is the “balance of probability”, and 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.
- 1.4 The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

### 2.0 Evidence submitted by the applicant

- 2.1 The applicants’ only evidence to support the application is a copy of correspondence received by the Council’s Planning Enforcement team, dated 14<sup>th</sup> October, which states that the removal of the railings would constitute permitted development in accordance with the General Permitted Development Order (1995). Drawings have been submitted which only show the removal of the railings to the north-west corner of the property, and not the main piers and railings to the Gayton Crescent elevation. It is believed that these were removed in December 2013.

### 3.0 Analysis

- 3.1 Class A, Part 2, Schedule 1 of the GPDO 1995 (original) states:

#### **Class A**

##### **A. Permitted development**

***The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.***

##### **A.1 Development not permitted**

*Development is not permitted by Class A if—*

- (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level;*
- (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed two metres above ground level;*
- (c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in subparagraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or*
- (d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.*

- 3.2 Regard is also had to Appendix A to Circular 10/95, ‘Planning Controls over Demolition’. The effect of this direction is to provide that the demolition of the following types of building shall not be taken to involve the development of land:

- a) Listed buildings, buildings in conservation areas and any building which is a scheduled monument as defined in the Ancient Monuments and Archaeological Areas Act 1979. The demolition of all such buildings is subject to control under other legislation;*
- b) A building of less than 50 cubic metres (when measured externally).*
- c) Any building other than a dwellinghouse or a building adjoining a dwellinghouse;*
- d) The whole or any part of any gate, fence, wall or other means of enclosure.*

- 3.3 The removal of the railings would clearly fall under part d) of this circular, and therefore would not constitute development.
- 3.4 An Article 4 direction was served on the property in January 2010, removing permitted development rights including those under Class A, Part 2. However it is clear from photographic evidence and enforcement investigations carried out before January 2010, that these railings to the north-west corner has been removed before the Article 4 direction was served.
- 3.5 The Council information does not have any evidence to contradict the applicant's assertion that the works to remove the railings took place before the Article 4 direction took place. In addition, from assessing the works against the definition of 'development' (as outlined in section 3.2 below), the removal of this section of the boundary treatment to the north-western corner of the property would not constitute development and therefore – in the absence of any other restrictions – is lawful.
- 3.6 Concerns have been raised by neighbouring occupiers that the removal of these railings has enabled the applicant to use the area of hard-standing on the north-western corner of the property as an off-street parking space. An enforcement notice has been served under Section 184 of the 1980 Highways Act by the Council's Highways team on the basis that, by driving across the public footpath to access the front garden, the occupiers are in breach of highways legislation.
- 3.7 No planning application for a dropped kerb has been submitted; if it were to be, it is highly likely to be refused on the basis that creating an access in such close proximity to the junction of Gayton Crescent and Willow Road, would be unsafe to pedestrians and other road users.
- 3.8 On this basis, an informative will be attached advising the applicant that as the Highways Act prevents the use of the footpath to access the space, it would be desirable to reinstate the railings around this section of the property.
- 3.9 The railings to the front (west) elevation of the property are believed to have been removed in December 2013 and have not been included in the assessment of this application. However an enforcement notice has been served, which took effect on 14/07/2014, requiring this section of the front boundary railings to be replaced to exactly replicate those which were removed with regard to detailed design, profile, materials, dimensions and method of fixing. This work must be carried out within two months of the notice taking effect (unless an appeal is made against it beforehand).

#### **4.0 Recommendation:**

- 4.1 Grant certificate

#### **DISCLAIMER**

**Decision route to be decided by nominated members on Monday 18th August. For further information please go to [www.camden.gov.uk](http://www.camden.gov.uk) and search for 'members briefing'**

Mrs Wendy Galway-Cooper  
15 Gayton Crescent  
London  
NW3 1TT

Application Ref: **2014/0968/P**  
Please ask for: **Neil Quinn**  
Telephone: 020 7974 1908

12 August 2014

**DRAFT**

Dear Sir/Madam

## **DECISION**

Town and Country Planning Act 1990

### **Certificate of Lawfulness (Existing) Granted**

The Council hereby certifies that on the 20 February 2014 the use described in the First Schedule below in respect of the land specified in the Second Schedule below, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 as amended.

#### First Schedule:

Removal of iron railings to north-western corner of property (junction between Gayton Crescent and Willow Road).

Drawing Nos: Location and block plan; 01 'Raised Ground Floor' dated 30th June 2008; 02 'Raised Ground Floor' dated 30th Sep 2008; 03 'Front elevation' dated 30th June 2008; 04 'Front elevation' dated 30th Sep 2008; 05 'North elevation' dated 30th June 2008; 06 'North elevation' dated 30th Sep 2008.

#### Second Schedule:

**15 Gayton Crescent  
London  
NW3 1TT**

#### Reason for the Decision:

- 1 The operations were substantially completed more than four years before the date



of this application.

- 2 The works are not considered to fall within the "meaning of development" requiring planning permission as defined by the Town and Country Planning Act 1990.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

Rachel Stopard  
Director of Culture & Environment

#### Notes

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use\*/operations\*/matter\* specified in the First Schedule taking place on the land described in the Second Schedule was\*/would have been\* lawful on the specified date and thus, was not\*/would not have been\* liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the use\*/operations\*/matter\* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use\*/operations\*/matter\* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.