

**Statement in respect of certificate lawfulness application for property known as: Ground floor, 12 Platts Lane, London NW3 7NR.**

**A certificate of lawfulness is sought for the existing use of the ground floor of the building as two self-contained dwellings.**

**Legal Position**

The application is made under Section 191 of the Planning Act 1990 (as amended).

The Act allows the issue of a Certificate of Lawfulness of existing use or development.

In this case the applicant has submitted evidence which demonstrates on the "*balance of probability*" that the property has been continuously used as a mixed use for commercial storage and motor vehicle repair and maintenance for at least eleven successive years, from the date the application was made.

For the purposes of this 1990 Planning Act, 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.

Section 171B of the 1990 Planning Act outlines the time limits that enforcement action can be taken against a breach of planning control. The relevant period for this change of use is four years.

In appeals to the Secretary of State which raise "legal issues" (for example, enforcement appeals on grounds (b) to (e) in section 174(2)), where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "*the balance of probability*". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a local planning authority (LPA) should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "*beyond reasonable doubt*".

Moreover, the Court has held (see *F W Gabbitas v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the local planning authority (LPA) have no evidence of their 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*".

Where the breach of planning control comprises a material change of use, as is the case in this application, continuity of the use over a four year period is clearly required to attain immunity from enforcement action (and therefore lawfulness).

## **The Evidence Submitted**

### **Statutory Declaration**

The statutory declaration of Ms Orly Weinberger dated 1<sup>st</sup> February 2021, states the following:

- The side unit of the ground floor was let out as a single dwelling when Ms Weinberger bought the property in May 2016.
- The studio dwelling on the side has been continuously let as a dwelling by the current owners since July 2016.
- The remaining part of the ground floor has been used as a single dwelling (known as Flat 1) by Ms Weinberger since she bought the property in May 2016.
- Exhibit OW5 attached to the statutory declaration shows the existing ground floor plan.

### **AST Tenancy Agreements and Letters**

The AST tenancy agreement dated 2<sup>nd</sup> July 2016, and the letter dated 12<sup>th</sup> January 2021, confirms that Mr Ben Mahony occupied the side unit studio dwelling from 8<sup>th</sup> July 2016 until 8<sup>th</sup> July 2018.

The AST tenancy agreement dated 1<sup>st</sup> July 2018, and the letter dated 1<sup>st</sup> December 2020, confirms that Ms Lorena Minena occupied the side unit studio dwelling from 9<sup>th</sup> July 2018 until 6<sup>th</sup> February 2020.

The AST tenancy agreement dated 29<sup>th</sup> January 2020, confirms that Rebecca Townsend had a tenancy agreement, for the side unit studio dwelling, until 6<sup>th</sup> February 2021. However, this tenancy agreement was terminated before the expiry of the tenancy agreement.

The AST tenancy agreement dated 25<sup>th</sup> August 2020, confirms that Ms Katrina Rogala has a tenancy agreement, for the side unit studio dwelling, from 5<sup>th</sup> October 2020 until 4<sup>th</sup> October 2021.

### **Conclusion**

The evidence submitted demonstrates “*on the balance of probability*” the ground floor of the building (as shown on submitted ground floor plan) has been used for a continuous period of at least four years as two self-contained flats.

