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The logo for SMPlanning, featuring the text "SMPlanning" in a white, sans-serif font on a dark rectangular background.

Via Planning Portal Only

5th July 2022

Dear Sir/Madam

**CERTIFICATE OF LAWFUL DEVELOPMENT (EXISTING) WITH RESPECT TO THE LAWFUL EXISTING C3 USE
FLATS 1-6 AT NO. 304 WEST END LANE, NW6 1LN.**

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 flats 1-6 at no. 304 West End Lane. 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;
- Site block plan;
- Plans, elevations and sections (as existing);
- Energy performance certificates for each of the flats;
- Gas Safety Certificate for each of the flats;
- Valuation Office records of the Council tax banding for each residential unit;
- Tenancy Agreements for each of the flats
- Sworn Affidavit from the property's owner regarding the continuous lawful use of the flats.

Supporting Evidence:

- Appendix 1 – Gas safety certificates for each flat dated 18th of August 2014, 17th of December 2014 and 3rd December 2015
- Appendix 2 – Energy performance certificates for each flat dated, 2nd of June 2014 and 27th October 2015
- Appendix 3 – Valuation office records of Council tax banding for each flat effective from 1st April 1993
- Appendix 4 – Tenancy agreements for each flat dated 3rd February 1996, 18th March 1996, 17th November 1997, 1st June 2002, 1st December 2006 and 1st March 2009
- Appendix 5 – Sworn affidavit dated 4th July

The Site

The site is located on the southern side of West End Lane, to the west of the junction with Crediton Hill. The site comprises a detached two storey building (with rooms in the roof). There is also a garage in the rear garden with vehicular access off Crediton Hill. The building has been subdivided into 6 flats. The site is on a street comprised of residential and commercial uses.

Planning History

On the 15th of March 1996, planning permission (reference 9501918) was refused for the erection of a rear first floor balcony, as shown on plans Nos. 3060 B1, 3060 B3.

On the 25th of November 1972, planning permission (reference 11869) was granted for the formation of an additional room at 2nd floor level, as an extension to the existing second floor flat at No 304 West End Lane N.W.6.

On the 16th of July 1971, planning permission (reference 11146) was refused for the erection of a second floor extension to accommodate a living room and bathroom at the rear of No. 304 West End Lane, N.W.6.

On the 8th of April 1971, planning permission (reference 10400) was refused for the formation of a second floor rear extension to accommodate on self-contained flat at No. 304 West End Lane, N.W.6.

On the 24th of June 1970, planning permission (reference 8688) was granted for the conversion of the first and second floor maisonette into 2 self-contained flats at No. 304 West End Lane, N.W.6.

On the 7th of September 1962, planning permission (reference TP65892/7949) was refused for the erection of a pair of flats at No. 304 West End Lane, N.W.3.

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 Gabbittas 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.304 West End Lane into 6 flats were completed in 1966. 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. 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.

Gas Safety Certificates have been submitted for each of the dwellings 18th of August 2014, 17th of December 2014 and 3rd December 2015 (**Appendix 1**). Energy Performance Certificates have been submitted for each of the dwellings dated, 2nd of June 2014 and 27th October 2015 (**Appendix 2**). Valuation Office records confirm the Council tax banding for each of the 6 properties, effective as of the 1st of April 1993 (**Appendix 3**). Tenancy agreements for each flat have been provided, dated 3rd February 1996, 18th March 1996, 17th November 1997, 1st June 2002, 1st December 2006 and 1st March 2009 (**Appendix 4**). A sworn affidavit has been provided by the owner of the flats which confirms that the flats have been continuously occupied other than short breaks between tenants vacating and subsequently re-occupying the flats since 1966 (**Appendix 5**).

Summary & Conclusion

The evidence submitted demonstrates that the 6 existing flats at no. 304 West End Lane 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

A handwritten signature in black ink, appearing to read 'Stuart Minty', with a long horizontal flourish extending to the right.

Stuart Minty
Director
SM Planning