

ET Planning

Certificate of Lawfulness for Existing Development

Client:

Ms. Lucy Elmes

120 Whitley Street

Reading, RG2 0EQ

*Certificate for the existing use of development as a
large-HMO (sui generis)*

Stephanie Richards **BA (Hons) MA**

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01 Introduction

- 1.1 This statement is produced to support a planning application for a Certificate of Lawful Development for 120 Whitley Street, Reading, RG2 0EQ.
- 1.2 This planning statement will introduce the meaning of 'development' in accordance with the Town and Country Planning Act 1990, summarises the relevant legal tests and set out the application in light of these. The conclusion reached is that the development is lawful and so no enforcement action can be taken.
- 1.3 It is respectfully requested that the appendices accompanying this report are kept private and confidential for the use of the Local Planning Authority only, as they contain personal and private information about the applicant and occupants. This information is submitted as evidence to support the claims within this report.
- 1.4 The relevant application fee will be submitted by the applicant separately.

02 Town and Country Planning Act 1990

- 2.1 Section 55(1) of the Town and Country Planning Act 1990 defines development as 'the carrying out of building, engineering, mining or other

operations in, on, over or under land, or the making of any material change in the use of any buildings or other land’.

- 2.2 Section 171A 1(B) of the Town and Country Planning Act relates to the time frames in which enforcement action can be taken against breaches of planning control. This includes “*carrying out development without the required planning permission.*” Section 171B (3) relates to breaches of planning control consisting of “*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*”.
- 2.3 Section 171B (3) therefore controls the relevant timeframe for the immunity from enforcement action, which means that a development in breach of a planning condition becomes immune from enforcement action after 10 years.
- 2.4 The dates to demonstrate the lawfulness of the change of use are from the date of the submission, March 2022 back 10 years. In this case the use commenced in September 2011, over the required period of 10 years.
- 2.5 Circular 10/97 (Enforcing Planning Control) was archived in March 2014 and replaced by the National Planning Policy Guidance (NPPG). The NPPG reiterates the previous guidance of the Circular and in paragraph 006 states that “*the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land*”.

- 2.6 It is established case law (F W Gabbittas 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.
- 2.7 The following section outlines the evidence submitted within the Appendices and explains how this evidences immunity from enforcement action.

03 Assessment of Submitted Evidence

Appendix 1: Statutory Declaration by Ms Lucinda Elmes

- 3.1 The statutory declaration submitted under this appendix is a statement of truth from owner and applicant Ms Lucinda Elmes, the current owner of the large-HMO. This document holds considerable weight as evidence, as providing an erroneous statement would be deemed an act of perjury which carries the risk of prosecution. Ms Elmes reaffirms her ownership of the property and clarifies that she purchased the property in 2011 and ever since, it has in use as a 7-bed HMO.
- 3.2 The majority of tenants entered into tenancy agreements for a 6-month term, with several contracts terminating early or continuing on a rolling basis. There have been short periods of vacancy in each room between tenancies, these periods can be accounted for by maintenance and redecoration as well as time allowed for marketing/advertising.
- 3.3 Supplementary evidence has been provided (see **Appendix 5**) to demonstrate reasons for early termination and that occupants would stay longer than the 6-month term.
- 3.4 The statement corroborates that the building has been in continuous residential use as a large-HMO since this time.

- 3.5 For clarification, a Statutory Declaration is a sworn, written statement of fact voluntarily made and declared to be true in the presence of an authorised witness. It carries **significant weight** in the determination of applications, as if the declaration turns out to be untrue, the defendant making it may be punished for perjury. Consequently, the information contained with the Declarations can be relied on as **true, clear and unambiguous**.

Appendix 2: HMO Licencing Certificate

- 3.6 The document submitted under this appendix is the certified HMO licence that confirms the use as a large 7-bed HMO for a period in excess of 10 years.
- 3.7 The letter provides confirmation that a mandatory HMO licence was issued to the previous owner on 23rd June 2009, permitting a maximum of 7 residents to occupy the property at any one time.

Appendix 3-4: Tenancy Agreements

- 3.8 A sample of tenancy agreements have been provided covering the time period from 2011 – the present. Not all tenancy agreements have been provided in contract form, however, supplementary evidence has been included to ensure clarification on short periods of vacancy and rolling contracts (see Appendix 4 & 5). Further to this, the statutory declaration submitted under Appendix x, corroborates the timeline for a continuous period of ten years.

- 3.9 The tenancy agreement submitted under this appendix is dated 22nd September 2011 and signed by Ms. Edna Nyangale. The agreement is on the basis of a fixed-term period of 6-months, starting on 22nd September 2011 and expiring on 21st March 2012.
- 3.10 The tenancy agreement submitted under this appendix is dated 27th June 2012 and signed by Mr Laurens Watts. The agreement is based on a fixed-term period of 6-months, starting on 27th June 2012 and expiring on 26th December 2012.
- 3.11 The tenancy agreement submitted under this appendix is dated 18th November 2012 and signed by Ms. Najeeba Farouk. The agreement is on the basis of a fixed-term period of 6-months, starting on 18th November 2012 and expiring no earlier than the 17th May 2013.
- 3.12 The tenancy agreement submitted under this appendix is dated 14th July 2013 and signed by Mr. Mohammad Zeeshan. The agreement is on the basis of a fixed-term period of 6-months, starting on 14th July 2013 and expiring no earlier on 13th January 2014.
- 3.13 The tenancy agreement submitted under this appendix is dated 2nd March 2014 and signed by Ms. Rachel Jenkins. The agreement is on the basis of a fixed-term period of 6-months, starting on 2nd March 2014 and expiring on 1st September 2014.
- 3.14 The tenancy agreement submitted under this appendix is dated 5th March 2014 and signed by Ms. Helena Burmicz. The agreement is on the basis of

a fixed-term period of 6-months, starting on 5th March 2014 and expiring on 4th September 2014.

3.15 The tenancy agreement submitted under this appendix is dated 1st June 2014 and signed by Mr. Alan Brook. The agreement is on the basis of a fixed-term period of 6-months, starting on 1st June 2014 and expiring on 31st December 2014.

3.16 The tenancy agreement submitted under this appendix is dated 17th December 2014 and signed by Mr. Travis Kennard. The agreement is on the basis of a fixed-term period of 6-months, starting on 15th December 2014 and expiring no earlier than the 14th June 2015.

3.17 The tenancy agreement submitted under this appendix is dated 21st March 2015 and signed by Mr. Travis Kennard. The agreement is on the basis of a fixed-term period of 6-months, starting on 21st March 2015 and expiring no earlier than the 20th September 2015.

3.18 The tenancy agreement submitted under this appendix is dated 21st March 2015 and signed by Ms. Helena Burmicz. The agreement is on the basis of a fixed-term period of 6-months, starting on 21st March 2015 and expiring on 20th September 2015.

3.19 The tenancy agreement submitted under this appendix is dated 22nd September 2015 and signed by Ms. Stephanie Samuel. The agreement is on the basis of a fixed-term period of 6-months, starting on 22nd September 2015 and expiring on the 21st March 2016.

3.20 The tenancy agreement submitted under this appendix is dated 2nd July 2016 and signed by Dr. Jeffrey Armstrong. The agreement is on the basis

of a fixed-term period of 6-months, starting on 10th January 2016 and expiring on 11th July 2016.

- 3.21 The tenancy agreement submitted under this appendix is dated 6th July 2017 and signed by Mr. Francois Du Toit. The agreement is on the basis of a fixed-term period of 3-months, starting on 15th July 2017 and expiring on 14th October 2017.
- 3.22 The tenancy agreement submitted under this appendix is dated 8th July 2016 and signed by Mr Guanren Wang. The agreement is on the basis of a fixed-term period of 6-months, starting on 9th July 2016 and expiring on 8th January 2017.
- 3.23 The tenancy agreement submitted under this appendix is dated 9th July 2017 and signed by Ms. Ewelina Wesola. The agreement is on the basis of a fixed-term period of 6-months, starting on 29th July 2017 and expiring on 28th January 2018.
- 3.24 The tenancy agreement submitted under this appendix is dated 29th November 2016 and signed by Mr. Marcin Psztyc. The agreement is on the basis of a fixed-term period of 6-months, starting on 30th November 2016 and expiring on 29th May 2017.
- 3.25 The tenancy agreement submitted under this appendix is dated 6th July 2017 and signed by Mr. Sheldon Fernandez. The agreement is on the basis of a fixed-term period of 6-months, starting on 6th July 2017 and expiring on 5th January 2018.
- 3.26 The tenancy agreement submitted under this appendix is dated 8th July 2017 and signed by Mr. Thomas Sampson. The agreement is on the basis

of a fixed-term period of 6-months, starting on 8th July 2017 and expiring no earlier than the 7th January 2018.

3.27 The tenancy agreement submitted under this appendix is dated 23rd July 2017 and signed by Mr. Marcus Rowbotham. The agreement is on the basis of a fixed-term period of 6-months, starting on 23rd July 2017 and expiring on 22nd January 2018.

3.28 The tenancy agreement submitted under this appendix is dated 4th August 2017 and signed by Ms. Chimaobi Dennar. The agreement is on the basis of a fixed-term period of 6-months, starting on 4th August 2017 and expiring on 5th February 2018.

3.29 The tenancy agreement submitted under this appendix is dated 23rd August 2017 and signed by Mr. Jonathan Pascoe. The agreement is on the basis of a fixed-term period of 6-months, starting on 28th August 2017 and expiring on 27th February 2018.

3.30 The tenancy agreement submitted under this appendix is dated 22nd October 2017 and signed by Ms. Chima Dennar. The agreement is on the basis of a fixed-term period of 6-months, starting on 22nd October 2017 and expiring on 21st April 2018.

3.31 The tenancy agreement submitted under this appendix is dated 7th November 2017 and signed by Ms. Lucy Hunt. The agreement is on the basis of a fixed-term period of 6-months, starting on 9th November 2017 and expiring on 10th May 2018.

3.32 The tenancy agreement submitted under this appendix is dated 23rd February 2018 and signed by Ms. Saira Shah. The agreement is on the

basis of a fixed-term period of 6-months, starting on 3rd March 2018 and expiring on the 2nd September 2018.

3.33 The tenancy agreement submitted under this appendix is dated 4th April 2018 and signed by Ms. Aida Maldovan. The agreement is on the basis of a fixed-term period of 6-months, starting on 4th April 2018 and expiring on 3rd October 2018.

3.34 The tenancy agreement submitted under this appendix is dated 22nd June 2018 and signed by Mr Josh Salvage. The agreement is on the basis of a fixed-term period of 6-months, starting on 23rd June 2018 and expiring on 22nd December 2018.

3.35 The tenancy agreement submitted under this appendix is dated 16th August 2018 and signed by Ms. Sainabou Mboge. The agreement is on the basis of a fixed-term period of 6-months, starting on 17th August 2018 and expiring on 15th February 2019.

3.36 The tenancy agreement submitted under this appendix is dated 29th September 2018 and signed by Ms. Esther Ajayi. The agreement is on the basis of a fixed-term period of 12-months, starting on 29th September 2018 and expiring a year later.

3.37 The tenancy agreement submitted under this appendix is 20th August 2018 and signed by Mr. Toma Kopanarov. The agreement is on the basis of a fixed-term period of 6-months, starting on 28th August 2018 and expiring on 27th February 2019.

3.38 The tenancy agreement submitted under this appendix is dated 18th February 2019 and signed by Ms. Judit Demeter. The agreement is on the

basis of a fixed-term period of 6-months, starting on 18th February 2019 and expiring six-months later.

3.39 The tenancy agreement submitted under this appendix is dated 14th May 2019 and signed by Mr. Michalis Antonakoudis. The agreement is on the basis of a fixed-term period of 6-months, starting on 14th May 2019 and expiring six-months later.

3.40 The tenancy agreement submitted under this appendix is dated 2nd September 2019 and signed by Mr. Ionut Predeteanu. The agreement is on the basis of a fixed-term period of 6-months, starting on 3rd September 2019 and expiring six-months later.

3.41 The tenancy agreement submitted under this appendix is dated 3rd March 2020 and signed by Mr. Alex Bush. The agreement is on the basis of a fixed-term period of 6-months, starting on 3rd March 2020 and expiring six months later.

3.42 The tenancy agreement submitted under this appendix is dated 7th June 2020 and signed by Ms. Gabriela Parasca. The agreement is on the basis of a fixed-term period of 6-months, starting on 7th June 2020 and expiring six months later.

3.43 The tenancy agreement submitted under this appendix is dated 15th September 2020 and signed by Mr. Toma Kopanarov. The agreement is on the basis of a fixed-term period of 6-months, starting on 15th September 2020 and expiring six-months later.

3.44 The tenancy agreement submitted under this appendix is dated 23rd March 2021 and signed by Mr. Justin Rowlands. The agreement is on the

basis of a fixed-term period of 6-months, starting on 23rd March 2021 and expiring six-months later.

3.45 The tenancy agreement submitted under this appendix is dated 26th April 2021 and signed by Ms. Besma Elkarroubi. The agreement is on the basis of a fixed-term period of 6-months, starting on 26th April 2021 and expiring six-months later.

3.46 The tenancy agreement submitted under this appendix is dated 26th May 2021 and signed by Ms. Besma Elkarroubi. The agreement is on the basis of a fixed-term period of 12-months, starting on 26th May 2021 and expiring 12-months later.

3.47 The tenancy agreement submitted under this appendix is dated 3rd May 2021 and signed by Mr. Marcus Arpino. The agreement is on the basis of a fixed-term period of 6-months, starting on 3rd May 2021 and expiring six-months later.

3.48 The tenancy agreement submitted under this appendix is dated 2nd February 2022 and signed by Ms. Ionna Vrettou. The agreement is on the basis of a fixed-term period of 12-months, starting on 2nd February 2022 and expiring a year later.

3.49 The tenancy agreement submitted under this appendix is dated 10th March 2022 and signed by Mr. Florin-Constantin Sveica. The agreement is on the basis of a fixed-term period of 6-months, starting on 10th March 2022 and expiring six months later.

3.50 These tenancy agreements corroborate the use of the property as a 7-bed HMO, for a continuous period of over ten years, the time required for this certificate.

Appendix 5 – Tenancy Spreadsheet

3.51 The document submitted under this appendix substantiates the use of the property as a 7-bed HMO for a continuous period of ten years.

3.52 The spreadsheet organises the data into each respective room, highlighting when tenancies began and ended. Additionally, information is provided as to whether the tenancy agreement and termination email details have been provided.

Appendix 6 – Email correspondence

3.53 The document submitted under this appendix can be viewed in conjunction with the spreadsheet provided at Appendix 4. The details on whether emails are available illustrating some tenant's reasons for early termination, are shown in the table.

3.54 This correspondence indicates reasons for early termination for several of the tenants and accounts for short periods of vacancy for each room.

Appendix 7a: Witness Letter – Mr Gerry Richardson

3.55 The document submitted under this appendix is a letter of endorsement provided by Mr Gerry Richardson, an electrician contracted to carry out works at 120 Whitley Street since 2011.

3.56 The letter corroborates that Mr Richardson performed routine electrical inspections, fire alarm and lighting safety checks at the property. To do so, he needed to required access to the communal areas and individual rooms and thereby can confirm that the property has been used continuously as a 7-bed HMO for a period of ten years.

Appendix 7b: Witness Letter – Mr Gerry Richardson

3.57 The document submitted under this appendix is a letter of endorsement provided by Mr Rob Stokes, a plumber contracted to carry out plumbing and boilers works at 120 Whitley Street since 2011.

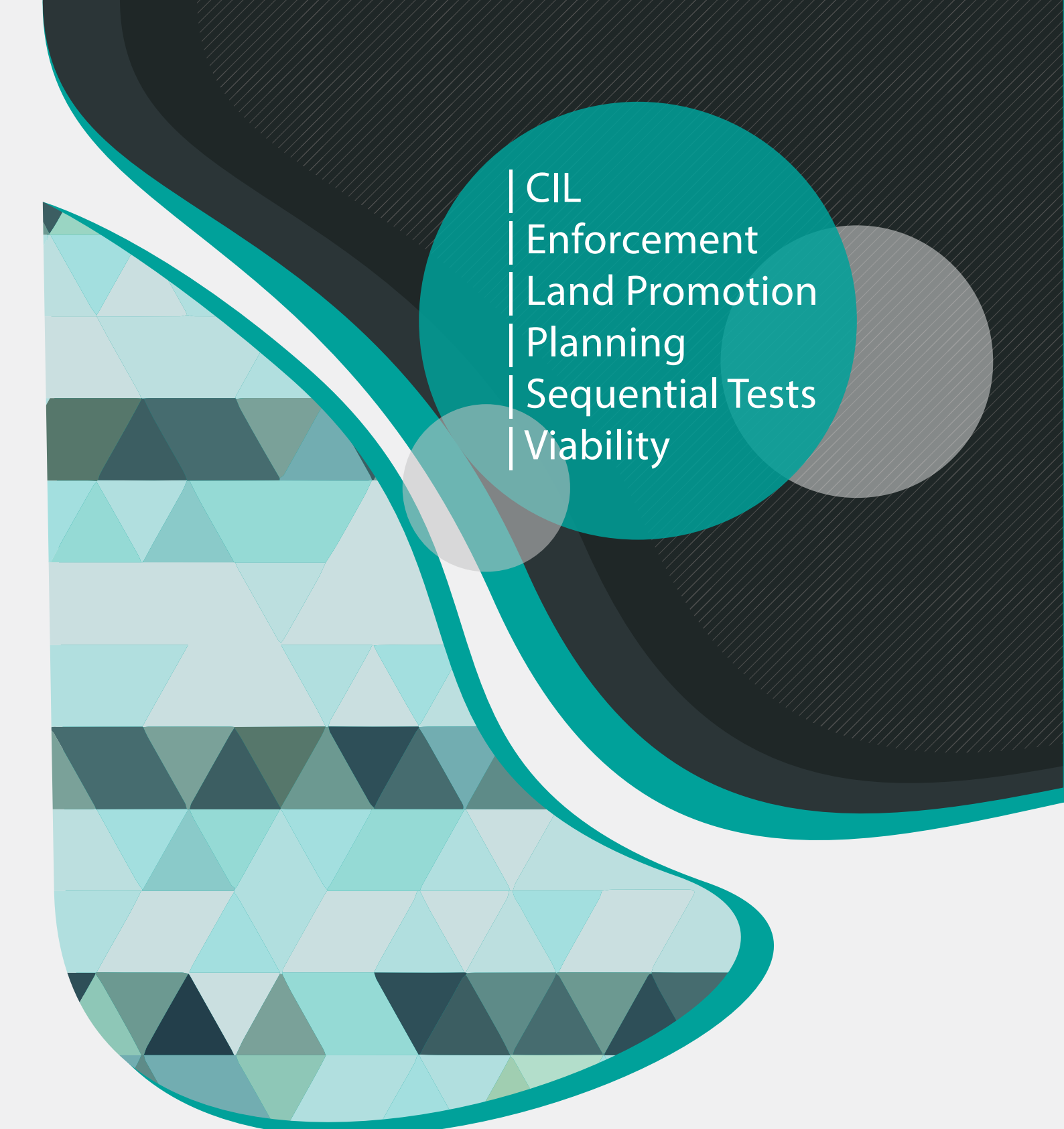
3.58 The letter corroborates that Mr Richardson performed regular maintenance for the ensuites and to do so, required access to the communal areas and individual rooms and thereby can confirm that the property has been used continuously as a 7-bed HMO for a period of ten years.

04 Conclusion

4.1 The relevant test for Lawful Use applications is the 'balance of probability.' Based on the submission of evidence, including a Statutory Declaration which can be relied upon as true, clear and unambiguous, it is submitted that the use of the property as a 7-bed HMO has been in place for continuous period of over ten years and is thus immune from enforcement action.

- 4.2 If the Council are in possession of any information that leads them to a different view to that set out above, we ask that we have the opportunity to examine this information to ensure a fair and balanced assessment
- 4.3 However, it is considered that the submitted evidence meets the tests of being clear and unambiguous. On the balance of probability, based on the submitted evidence, it is therefore requested that the application for a certificate of existing lawful use be approved.

Stephanie Richards BA (Hons) MA
Graduate Planner | ET Planning
200 Dukes Ride Crowthorne RG45 6DS
stephanie@etplanning.co.uk 01344 508048



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Contact

Address

200 Dukes Ride RG45 6DS
One St Aldates OX1 1DE
32 London Road GU1 2AB
14 The Square SY1 1LH

Phone

01344 508048
01865 507265
01483 363950
01743 612043

Web & Mail

Email: office@etplanning.co.uk
ET Planning Ltd | 10646740

Web: www.etplanning.co.uk