

ET Planning

Certificate of Lawful Development or use

Client:

Little Tots Nurseries Ltd

Little Tots Nursery

59 Prince of Wales Avenue, Reading, RG30 2UJ.

*Application for a Certificate or Existing Lawful Use to
Demonstrate Non-Compliance with Condition 3 of
Planning Consent 010324 (decision date: 14/05/2001) for
a period in excess of 10 years.*

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1. Introduction

- 1.1 This statement is produced to support a certificate of lawful use development (CLEUD) to **“Demonstrate non-compliance with condition 3 of Planning Consent reference: 010324 for a continuous period of 10 years”** at Little Tots Nurseries Ltd, 59 Prince of Wales Avenue, Reading, RG30 2UJ.
- 1.2 Condition 3 confirmed that the childcare facilitate could only provide care to 24 children. However, as shown by the evidence within this statement the facility has been accommodating up to 44 children for over 10 years, thus, ensuring that the use of the facility to accommodate a maximum of 44 children is lawful.
- 1.3 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 sets out the application in light of these. The conclusion reached is that the development is lawful and so no enforcement action can be taken.
- 1.4 In addition to this planning statement, the application is accompanied by the appropriate planning application forms and ownership certificate, duly signed and completed, and the following documents.
 - 1:1250 Site Location Plan
- 1.5 The relevant application fee will be submitted by the applicant separately.

2. Site Location and Description

- 2.1 The application site is located on the corner of prince of Wales Avenue and Edinburgh Road in Reading. The application site is circa 250 metres away from Reading West train station and multiple bus routes along Oxford Road (A329) which are within walking distance. A local high-street is located along Oxford Road within close proximity of the site ensuring that suitable transport and amenities are provided.
- 2.2 The application site has a stone driveway to the front of the building which provides parking for two vehicles.
- 2.3 The building is a two-storey building which comprises of a large single storey extension to the rear which is utilised in regard to the nursery.
- 2.4 The surrounding area is residential and commercial in nature with multiple education facilities located between residential dwellings within the surrounding area. Commercial operations are located within close proximity of the site along Oxford Road and Tilehurst Road.
- 2.5 Two nurseries are located within a mile of this facility with these additional nurseries having an upper-level capacity of circa 50 children.
- 2.6 The building has been in use since 1993 as shown in the planning history section below, with the ground floor of the building operating as a nursery for circa 30 years. The nursery tends to children aged between 2-5 years.
- 2.7 There are no Listed Buildings on site or nearby and the area is not within a Conservation Area. The site is located within Flood Zone 1 which carries the lowest associated risk of fluvial flooding. There do not appear to be any ecological designations on site.

3. Planning History

- 3.1 Reference: 930668 – use of ground floor as day nursery – relaxation of condition 3 of consent 87/TP/1061 appeal 1042 to increase from 16 to 20 children. Approved – 02/07/1993.
- 3.2 Reference: 991320 – Construction of new Gable Roof and Dormer Window to Provide Additional Bedroom. Approved – 07/05/2000.
- 3.3 Reference: 010324 - Variation of Condition on Planning Consent 930668 to increase number of children from 20 to 24. Approved – 14/05/2001.
- 3.4 Reference: 070581 - Variation of Condition 3 of planning permission 01/00231/VARIAT to increase the existing childcare provision of 24 children to provide an additional baby unit for 14 babies. Withdrawn – 01/06/2007.
- 3.5 As shown by the history above, permission was obtained in 2001 for the use of the ground floor of the building to support the care for 24 children. A following application for the care of 14 additional babies was withdrawn. No further applications have been submitted since these dates.
- 3.6 Therefore, permission has existed since 2001 for a nursery serving 24 children. The nursery has been operating from at least 1993 until the present day with the use never ceasing. This Lawful Development Certificate application seeks to establish that condition 3, limiting the number of children to 24 (Reference 070591) at the school to has not been complied with for the requisite period of time (10 years), as such the development should now be considered lawful.

4. Use of the building

- 4.1 Evidence will be provided in section 6 of this statement to prove that the nursery has been used on site to facilitate a maximum of 44 children. However, this section clearly clarifies what the site has been used for over the past 30 years, and subsequently what this certificate now seeks permission for.
- 4.2 The nursery has accommodated a maximum of 44 children since 2008, evidence has been provided from 2012 to show that the proposed use is acceptable under the passage of time (10 years).
- 4.3 No external changes have been made to the building throughout this time and this application only seeks permission for the number of children that this facility has served effectively and efficiently overtime.

5. Planning Legislation

- 5.1 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'.
- 5.2 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*".

- 5.3 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.
- 5.4 The dates to demonstrate the lawfulness of breach of condition are from the date of the submission, February 2022, back 10 years to February 2012. In this case, it can be demonstrated that the breach of condition has occurred for at least the last 10 years.
- 5.5 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"*.
- 5.6 It is established case law (F W Gabbitts 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.
- 5.7 In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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.
- 5.8 In this case, the declaration is submitted, along with the further evidence to prove that the site has been used in the proposed manner for at least the past 10 years.

- 5.9 There is no requirement for the evidence to be wholly definitive and the local authority must issue a Certificate, unless it has contrary evidence of its own which would contradict the applicant's version of events. We respectfully suggest that the "balance of probability test" is well founded and made.
- 5.10 The following section outlines the evidence submitted within the appendices and explains how this evidence immunity from enforcement action.

6. Assessment of Evidence

- 6.1 **Appendix 1: Ofsted Reports 2008-2018:** Ofsted reports have been provided between 2008 and 2018 which clearly state that the capacity of the nursery is 44 children. This is consistent between 2008 and 2018 and shows that the nursery has been operating at this capacity since 2008.
- 6.2 **Appendix 2: Statutory Declaration - Heather Schofield:** A declaration has been submitted by Mrs Heather Schofield which confirms that she has jointly owned the company since 2007.
- 6.3 The declaration confirms that Mrs Schofield has been present on site between the years of 2007 and 2022 and has witnessed the number of children that have been on site between these dates. Mrs Schofield confirms that a maximum of 44 children have attending the nursery between 2008 and 2022.
- 6.4 Mrs Schofield confirms that the facility can accommodate 44 children and always attempts to operate at their maximum capacity of 44. As evident in the nature of a nursery this capacity is not always met; however, the majority of the days between 2012 and 2022 44 children have been cared for on site.

- 6.5 This is shown on the submitted registers which clearly clarify that the nursery has been used to accommodate 44 children throughout the last 10 years. This is also shown on the Ofsted reports which further clarify this maximum number.
- 6.6 **Appendix 3-12: Registers between 2012-2022:** The submitted registers show that over a 4-week period within February/March for the last 10 years the nursery has been operating at a maximum of 44 children. This clearly shows that the capacity of Little Tots Nursery has been in breach of condition 3 as stated above and is now immune of enforcement action. Therefore, permission for a maximum of 44 children should be granted.
- 6.7 **Conclusion of Evidence:** Each piece of information is consistent with one another, and further corroborated by the Statutory Declaration of the owner who has been present for the duration.
- 6.8 There does not appear to be any information which would contradict the evidence, which is deemed to be more than sufficient, as well as clear and precise, as required by planning legislation and accepted within Case Law.

7. Conclusion

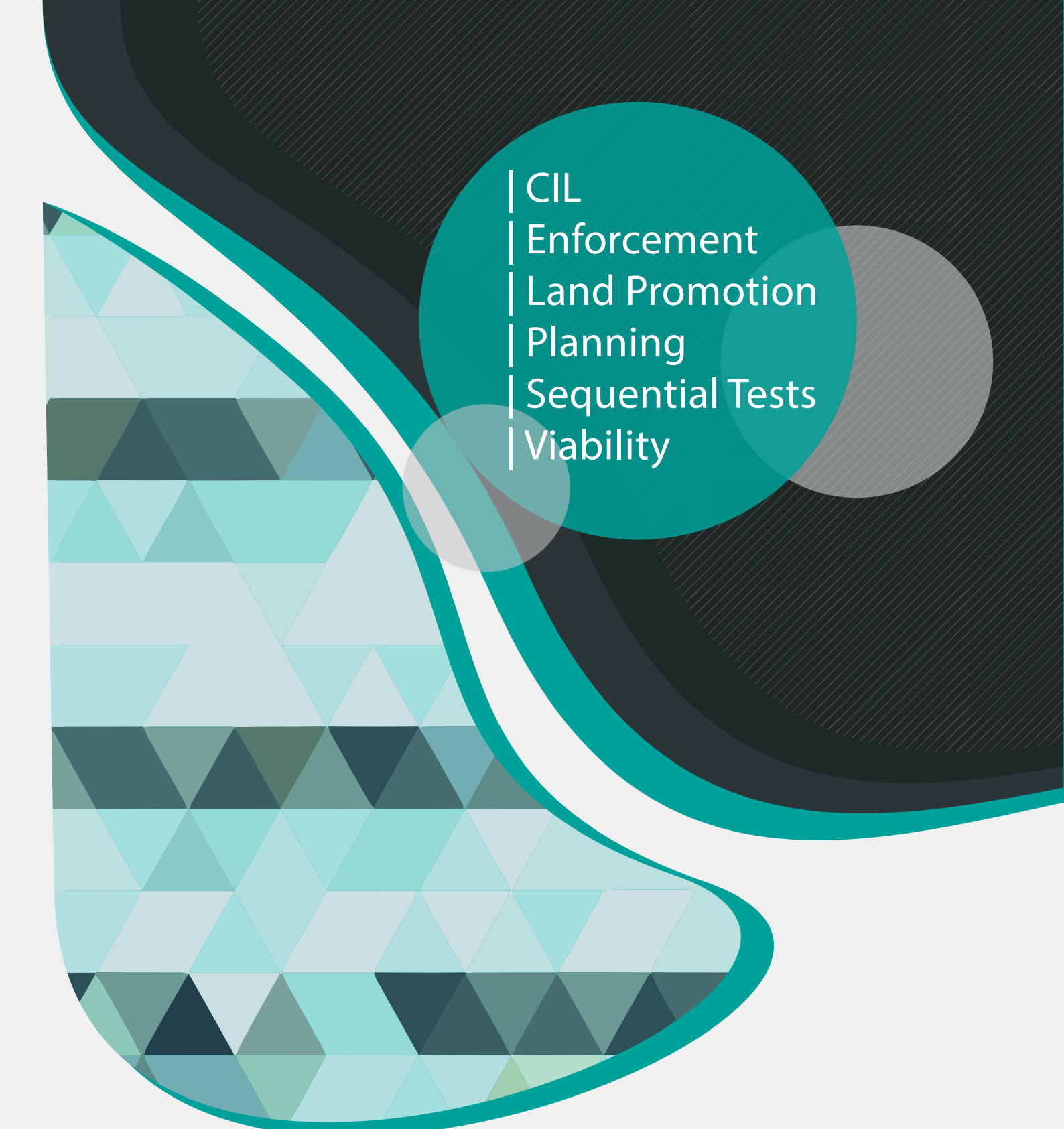
- 7.1 The relevant test for Lawful Use applications is the 'balance of probability.' Based on the submission of evidence, including a Statutory Declaration which can be relied upon as true, clear, and unambiguous, it is submitted that the applicable condition has been breached for a period of at least 10 years. Therefore, the proposed use is immune from enforcement action and should be deemed as acceptable under the passage of time.
- 7.2 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.
- 7.3 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.

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