



Planning

Planning Statement

Client:

Ms Lucy Elmes

133 London Road

Reading, RG1 5DD

Application for a Certificate of Lawfulness for the sub-division of former single dwelling into 7no. self-contained apartments and 1no. bedsit.

Matthew Miller **BSc(Hons) MSc MRTPI**

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01 Introduction

- 1.1 This statement is produced to support a planning application for a Certificate of Lawful Development for the sub-division of the former single dwelling into 7no. self-contained apartments, and 1no. bedsit with a communal bathroom facility (sui generis HMO use) at 133 London Road, Reading, RG1 5DD.
- 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, where relevant, the appendices accompanying this report are kept private and confidential for the use of the Local Planning Authority only, where 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 In addition to this report, the application is accompanied by the appropriate certificate application forms, appendices and a 1:1250 Site Location Plan.
- 1.5 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 ('TCPA') 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 171B of the TCPA relates to the time frames in which enforcement action can be taken against breaches of planning control. Specifically, Section 171B(1) of this Act states:

"Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of-

(a) In the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantial completed..."

2.3 Section 171B(2) of the 25/04/24 amendments to the TCPA goes on to state:

"Where there has been a breach in 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-

(a) in the case of a breach of planning control in England, ten years beginning with the date of the breach..."

2.4 Prior to the 25/04/24 amendment, the TCPA stated the following at Section 171B(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".

2.5 The above at paragraph 2.4 also bore relevance where changing part of a building into a dwellinghouse, where in the case of this application what was the original building is now seven separate dwellings (with the bedsit).

2.6 The Planning Act 2008 (Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024 clarifies the transitional arrangements in respect to the amendments to the TCPA as detailed above. It states at Part 3, paragraph 5 that:

The amendments made to the 1990 Act by section 115 of the 2023 Act (time limits for enforcement) do not apply where—

(a) in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (time limits), the operations were substantially completed, or

(b) in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred, before the day on which that section comes into force.

- 2.7 In plainer terms, the above sets out that for breaches of planning control which occurred before 25/04/24 and were subject to the previous 4 year time frame, are immune from enforcement action provided that the operations in question were substantially completed at least 4 years prior to 25/04/24. This therefore applies to the self-contained dwellings.
- 2.8 Turning to the bedsit, this would be subject to a ten year requirement as it is not a dwellinghouse in its own right.
- 2.9 The above scenario has precedence and has been previously established in Certificate of Lawfulness approval 11/00294/CLE (**Appendix 12**) for 137 London Road, Reading, RG1 5DD.
- 2.10 The relevant time frame in which enforcement action can be taken in respect of the development subject to this Certificate is therefore four years for the self-contained units (to 25/04/24), and ten years for the bedsits.
- 2.11 As a fall-back scenario, the property as a whole has been used as Sui Generis HMO for a period exceeding a minimum 10 years.

2.12 The dates to demonstrate the lawfulness of the self-contained dwellings are from 25 April 2024 back four years to April 2020. Notwithstanding this, in this case the use commenced by 2018, with the bedsit/HMO residential use being present since at least February 1981.

2.13 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"*.

2.14 The NPPG goes on to state: *'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'* (Paragraph 006 Reference ID: 17c-006-20140306) [my emphasis].

2.15 It is established case law (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.

2.16 The following section outlines the evidence submitted within the Appendices, and explains how this evidences immunity from enforcement action.

03 Assessment of Submitted Evidence

- 3.1 The unit present within the property and subject to this submission are known as Flats 1, 2, 4, 5, 6, 7, 8 and then Bedsit 3.
- 3.2 Bedsit 3 remains as a bedsit and not a self-contained dwelling because its WC & shower room is not contained within the bedsit itself. This room is essentially utilised by the occupant/s of this bedsit alone. It is solely on this internal physical detachment that the bedsit remains as such.
- 3.3 Whilst the timetable of tenant occupation provided within the Statutory Declaration does contain some limited breaks between individual tenants, as is to be expected as normal when the units were between tenancy, these were short in duration.
- 3.4 **Appendix 13** demonstrates that when gaps in occupation occur, these do not automatically cancel or restart the test of continuous occupation. Rather, the appeal decision demonstrates that the correct approach is one where the decision-maker must come to a conclusion based on the justification/explanation of the vacant period, as a consideration of fact and degree.
- 3.5 **Appendix 14** provides an example where an Inspector deemed a gap in occupation of one month between tenants did not constitute a significant break or interruption in the continuous use of the property for its residential

purpose, especially where during this time the property remained capable of being used for such a purpose.

3.6 **Appendix 1 - Statutory Declaration of Mr Dyal Singh (former owner and manager)** has been submitted and confirms that he owned 133 London Road, Reading, RG1 5DD, from February 1981 to 2012, along with his wife, Surjit Kaur. Thereafter ownership was passed to his two sons – Rajinder Singh Hallen and Manjit Singh Hallen (see also Appendix 2).

3.7 The Statutory Declaration sets out that as of February 1981, the property comprised 8no. individual residential units, as a combination of self-contained units and bedsits. Mr Singh proceeded to then utilise these units as a Sui Generis House in Multiple Occupation ('HMO').

3.8 As per paragraph 3.6 above, Mr Singh passed ownership of the property to his two sons in 2012, however continued to undertake management of the property until 2019, whereby he passed management responsibility to Phil Hornby (see also Appendix 3).

3.9 Internal alterations were undertaken between 1981 and 2018, which over the passage of time provided kitchen and WC & shower facilities to the individual bedsits (excluding the WC & shower facility to bedsit 8). These allowed the units now known as Flats 1 to 7 to become self-contained residential units.

3.10 At paragraph 11 of Appendix 1 a list of the tenants are provided for the relevant time of Mr Singh's management of the property, and these correspond to Appendix 4.

3.11 Within both this Statutory Declaration and the further Statutory Declarations provided (see below), the reference to 'Flat 3' is the same unit as 'Bedsit 3' being referred to within this Statement.

3.12 The Statutory Declaration, in combination with the other evidence provided, therefore shows a continuous, uninterrupted use of the site as seven apartments for a period of over 4 years, with the remaining bedsit being present for an uninterrupted period of over 10 years. The property as a whole has been evidenced to have been used historically as sui generis HMO prior to the creation of the self-contained apartments.

3.13 **Appendix 2 - Statutory Declaration of Mr Rajinder Singh Hallen (former co-owner)** has been submitted and confirms that Rajinder is the son of Dyal Singh, and co-owned the property with his brother, Manjit Singh Hallen, from 2012 to April 2024.

3.14 For the purposes of clarification, Green Elmes Property Ltd then purchased the property in April 2024, with the Director Lucy Elmes as the named applicant for this submission.

- 3.15 Paragraph 10 of Appendix 2 provides a full list of tenants (as summarised in the below section), with tenancy agreements provided via Appendix 4.
- 3.16 Other matters and the timetable evidenced within the wider submission are also confirmed within this Declaration.
- 3.17 This Statutory Declaration, in combination with the other evidence provided, therefore provides support for the Certificate of Lawfulness.
- 3.18 **Appendix 3 - Statutory Declaration of Mr Phil Hornby (former property manager)** has been submitted and confirms that Mr Hornby was involved in the property management on a partial basis between 2012 – 2019, and took a primary property management role in 2019, upon Mr Dyal Singh ceasing his involvement in management (see also Appendix 1).
- 3.19 Mr Hornby's declaration correlates with the submission of other evidence in support of this application, including the list of tenants, tenancy declarations, the presence of HMO licenses, and the timescale involved.
- 3.20 This Statutory Declaration, in combination with the other evidence provided, therefore provides support for the Certificate of Lawfulness.

3.21 **Appendix 4 - Tenancy Agreements:** Tenancy agreements are provided dating back a minimum of 4 years from the date of submission. For each flat/bedsit the timescale differs, and the reason for this is the availability of tenancy agreement records.

3.22 In the case of Flat 7, this has had a continuous tenancy and occupation by Mr Edwin Alleyne, from August 2013 to the present day. His Statutory Declaration is provided as Appendix 5.

3.23 The timeframe and lists of tenants can be summarised below, as also provided in the Statutory Declarations:

Flat 1

- Raj Asikram, from 07/02/2024 to present day
- Askram Rai & Gangeshkumari Rai, from 01/02/2022 to shortly before the next tenant occupied the unit.
- Hasta Kumari Gurung & Tek Bahadur Gurung, from 01/12/2019 to shortly before the next tenant occupied the unit.

Flat 2

- Ratnabhadur Gurung & Barbwati Gurung, from 14/01/2022 to present day
- Mani Harka Rai & Pampha Maya, from 01/05/2018 to shortly before the next tenant occupied the unit.

Bedsit 3 (also referred to as Flat 3)

- Noel Rees, from 18/10/2021 to present day
- Indra Wati Raini, from 01/03/2020 to shortly before the next tenant occupied the unit.
- Mam Prasad Gurung, from 14/06/2018 to shortly before the next tenant occupied the unit.

Flat 4

- Ramsing Rai & Manishaba Rai, from 10/01/2024 to present day
- Krishnamaya Rai, from 06/11/2023 to 09/01/2024
- Gurung Ratnabhadur & Gurung Sarswati, from 20/11/2020 to shortly before the next tenant occupied the unit.
- Kulbahadur Rai and Rikhi Subha Rai, from 01/01/2018 to shortly before the next tenant occupied the unit.

Flat 5

- Krishnamaya Rai, from 10/01/2024 to present day
- Rikhi Sobha Rai, from 01/10/2022 to shortly before the next tenant occupied the unit.
- Seti Maya Rai, from 09/01/2022 to shortly before the next tenant occupied the unit.
- Pabi Maya Rai, from 01/12/2019 to shortly before the next tenant occupied the unit.
- Hasta Kumari Gurung & Tek Bahadur Gurung from 01/05/2019 to 30/11/2019

- Deu Mayagurung, from 01/01/2018 to shortly before the next tenant occupied the unit.

Flat 6

- Dan Bahadur Rana from 14/12/2023 to present day
- Dam Bahadur Rana & Bhajan Kumar Rana, from 11/12/2020 to 13/12/2023
- Rai Raj Kumari, from 01/08/2019 to shortly before the next tenant occupied the unit.
- Nash Anjo Belchior, from 01/12/2018 to shortly before the next tenant occupied the unit.

Flat 7

- Edwin Alleyne, from August 2013 to present day. The tenancy agreement of 04/08/2017 onwards is available.

Flat 8

- Gurung Purna Singh, from 01/04/2022 to present day

3.24 As also per the submitted Statutory Declarations, the majority of tenancy agreements have been based upon a 6-month fixed contract, with a rolling period following this, and are paid monthly via bank transfer.

3.25 Short gaps in the individual tenancies are discussed in paragraphs 3.3 to 3.5 of the statement above.

3.26 **Appendix 5 – Statutory Declaration of Mr Edwin Alleyne (current tenant)** has been submitted and confirms that Mr Alleyne has been a tenant of Flat 7 since August 2013, and it remains his primary residence to the present day (see also Appendix 4).

3.27 The Declaration goes on to confirm that when Mr Alleyne first occupied Flat 7, the unit contained a personal kitchen, with the WC & shower facilities being shared with other tenants (i.e. a bedsit). During his tenancy internal alterations proceeded to be made which provided facilities, including a WC & shower to his flat, enabling them to be used as self-contained apartments. These had been completed by 2018.

3.28 Amongst other confirmations, Mr Alleyne confirms that to the best of his knowledge, each of the other seven units within the property have been consistently occupied for the entire length of his tenancy.

3.29 **Appendix 6 – HMO Licences:** The documents provided confirm that the property has been registered with Reading Borough Council since at least May 2010, with a capacity for 12 persons.

3.30 Various alterations to the HMO licence have been made during the above stated timeframe, reflecting internal alterations made to the property, as also presented elsewhere.

3.31 Whilst the HMO licences confirm a Sui Generis HMO use, separate evidence provided demonstrates that seven of the units within the property are self-contained, and have been so for a minimum of four years prior to this application.

3.32 **Appendix 7 – List of Works Undertaken to Property:** A company known as Smart Construction Ltd provided a list of internal works to be undertaken to the property, with the document dated 9 April 2017. This list included various electrical works as well as the installation of kitchen facilities.

3.33 Further details of these works, including receipts of payment, have not been kept by the previous property owners.

3.34 **Appendix 8 – Email correspondence with Council:** An email from the Entitlement & Assessment team of the Council to Mr Dave Myhill (who worked for Dyal Singh, see Appendix 3 paragraph 2), dated 23/11/2012. The contents of the email concerned one of the tenants of 133 London Road (Brett Malkin of Flat 7, as per email heading) was receiving benefit payments from the Council – thereby making Flat 7 his primary residence at the time.

3.35 **Appendix 9 – Original Floor Plans:** Floor Plans of the property as in existence at the time of Mr Dyal Singh's purchase in 1981 are provided.

These demonstrate the presence of an 8no. bedsits, enabling use as a Sui Generis HMO at the time.

3.36 **Appendix 10 – Current Floor Plans:** Floor Plans of the property as currently present are provided. These annotate which apartment is which (Flat 3 = Bedsit 3), as well as confirming the self-contained nature of the listed Flats.

3.37 **Appendix 11 – Reading Council Property Gazetteer:** Accessed via the online Proposals Map on the Council's website (<https://my.reading.gov.uk/custom/ReadingLocalPlanSolo.html>), this contains a list of seemingly registered properties in the Borough.

3.38 In relation to the application site, the gazetteer contains a total of 8 addresses relating to the property, known as Flats 1 to 8, as shown in the Appendix. This therefore supports evidence that the property has been subdivided into seven self-contained units and one bedsit.

3.39 **Appendix 12 – Certificate of Lawfulness reference 11/00294/CLE:** Whilst not provided directly as evidence to the use of the application site, this Certificate confirms that the Council have previously granted a Certificate of Lawfulness of a mixed use involving self-contained flats and bedsits, within the immediate vicinity of the application site (see also section 2 of the above Statement).

04 Conclusion

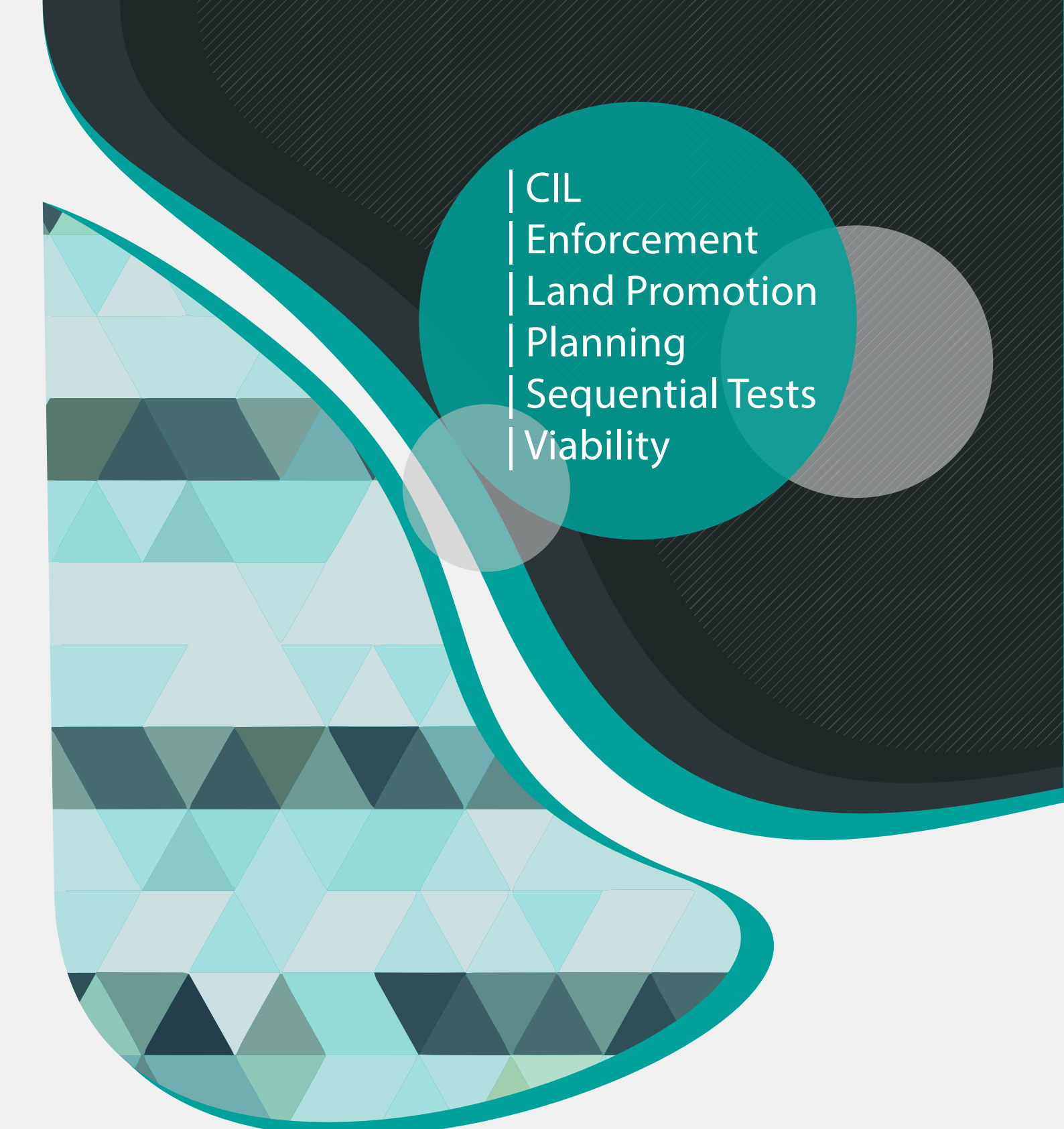
- 4.1 As per paragraph 2.8 above, the relevant test for Lawful Use applications is the 'balance of probability.' Based on the submission of evidence, including four Statutory Declarations which can be relied upon as true, clear and unambiguous, it is submitted that the use of the land for 7no. self-contained apartments, and 1no. bedsit, has been present for the requisite time periods, and are 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.

Matthew Miller BSc (Hons) MSc MRTPI

Associate Director | ET Planning

200 Dukes Ride Crowthorne RG45 6DS

matthew.miller@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
72 Paris Street EX1 2JY

Phone

01344 508048
01865 507265
01483 363950
01743 612043
01392 691384

Web & Mail

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

Web: www.etplanning.co.uk