
**STATEMENT IN SUPPORT OF A
CERTIFICATE OF LAWFUL USE FOR
USE OF THE LOWER GROUND FLOOR
AT 6 ELDON ROAD, READING, RG1 4DH
AS 2 SELF CONTAINED RESIDENTIAL
DWELLINGS**

**LOWER GROUND FLOOR, 6 ELDON
ROAD, READING, RG1 4DH**

WBP REF: 8390

**CERTIFICATE OF LAWFUL USE
PLANNING STATEMENT**

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SEPTEMBER 2023



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1. INTRODUCTION & SUMMARY

- 1.1. The application relates to a certificate of lawful use for use of the lower ground floor at 6 Eldon Road, Reading, RG1 4DH as 2 no. self-contained residential dwellings (use class C3).
- 1.2. The applicant applies under the provisions of Section 191 of the Town and Country Planning Act 1990 (as amended) for a Certificate of Lawful use. The grounds for the certificate are that the use of the lower ground floor as 2 no. self contained dwelling houses began more than 4 years before the date of the application and this use has been continuous within the relevant 4 year period. It remains in use as 2 no. self contained dwelling houses today.
- 1.3. This statement sets out details relating to the:
 - Relevant legislative / planning policy context;
 - Relevant site context;
 - Assessment of the issue; &
 - 'The Balance of Probability' & Conclusions.

2. RELEVANT LEGISLATIVE / PLANNING POLICY CONTEXT

2.1. The statutory framework for such applications and their determination is detailed in Sections 191 to 193 of the Town and Country Planning Act 1990 ("the Act").

2.2. The statutory framework covering a certificate of lawful use or development is set out in Section 191 (2) of the Act:

(2) For the purposes of this 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.

2.3. Further Section 171B (2) of the Act 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.

2.4. Applying the definition in Section 336 of the Act, the "building" will include any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. This is also consistent with Section 55 (3) of the Act that confirms that use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse

involves a material change in the use of the building and of each part of it which is so used.

- 2.5. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or for which planning permission is not required. In the case of this proposal, development becomes immune from enforcement if no action is taken within 4 years for an unauthorised change of use to 2 no. self-contained dwelling houses.
- 2.6. The evidence submitted alongside this submission is considered to be sufficient to grant the Certificate of Lawful use. It is considered that there is considerable evidence that suggests the certificate should be granted. In applying the lawful test which requires “on the balance of probabilities”, it has been demonstrated that the use has been as 2 no. single dwelling houses for over 4 years. This case is expanded upon in later sections of this statement below.
- 2.7. The National Planning Practice Guidance (“PPG”) confirms the following principle (Paragraph:006 Reference ID: 17c-006-20140306):

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. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

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. (Our emphasis)

- 2.8. The above guidance conveys principles also underpinned by various case law, namely the test is on the "balance of probabilities" not for example "beyond reasonable doubt" (as would apply in a criminal prosecution case). Further, the "Certificate of lawful use or development appeals: procedural guide" (dated June 2022) includes further reference to the principle that the appellant's own evidence does not need to be corroborated, particularly if it is unchallenged, in order to be accepted:

The Court has held that the appellant's own evidence does not need to be corroborated by 'independent' evidence, particularly if it is unchallenged, in order to be accepted. However, it is the appellant's responsibility to provide clear evidence to justify the grant of a certificate. (paragraph 5.3.4).

3. SITE CONTEXT

- 3.1. The subject of this application forms the lower ground floor at 6 Eldon Road, Reading, RG1 4DH. The site's location is shown on the extract taken from the supporting Location Plan below.

Lower Ground Floor 6, Eldon Road, Reading, RG1 4DH

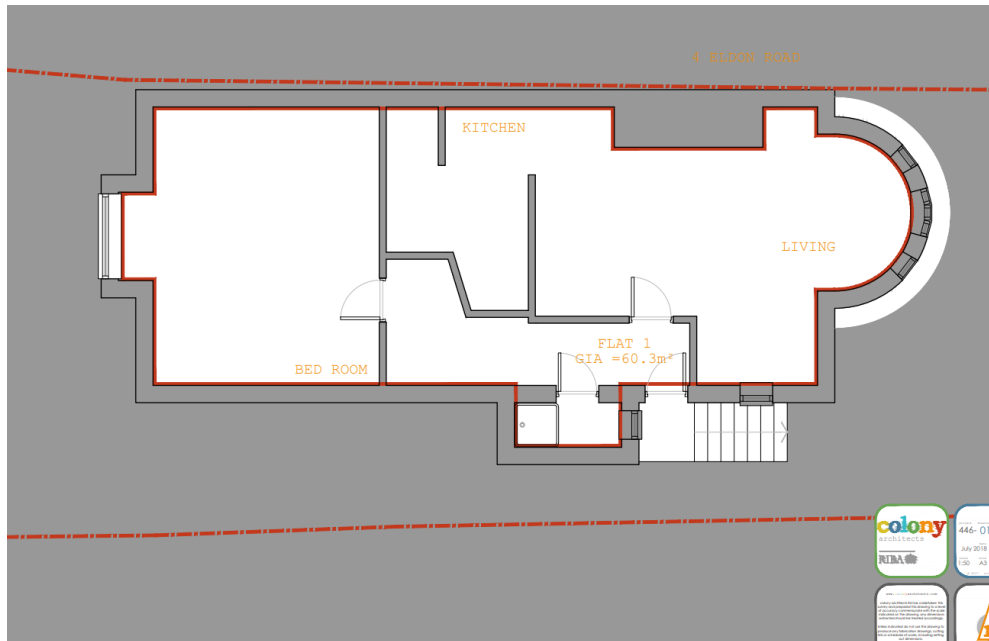


Extract from Location Plan

- 3.2. Relevant planning history to the site includes the following certificate of lawful use granted on 25th March 2019 under LPA Ref. 181230:

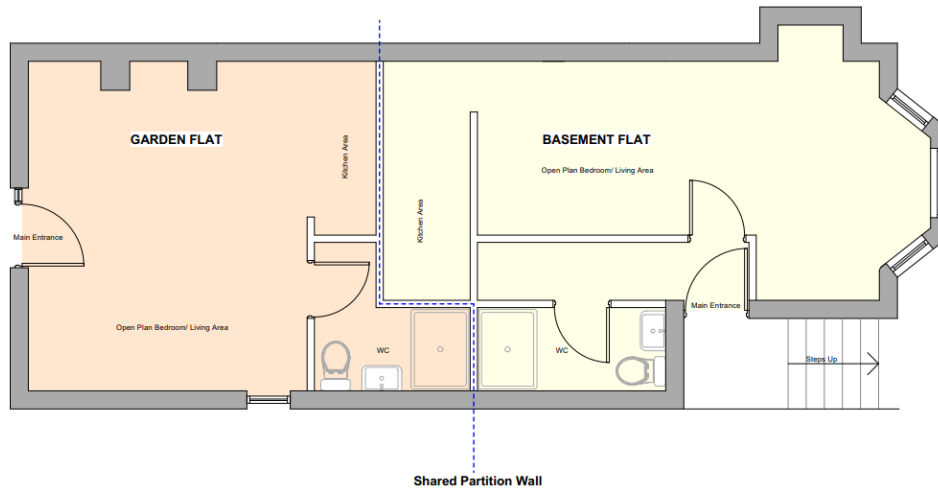
Certificate of Lawfulness of existing use as 6 x self-contained flats (5 x studio flats and 1 x 1 bedroom flat) and 1 x bedsit

- 3.3. This certificate confirmed the lawful use of the building at that time for 7 no. flats. The existing lower ground floor plan considered as part of the 181230 approval is extracted below. It illustrates the use of the lower ground floor as a single dwelling house at that time.



Lower Ground Floor Plan submitted alongside 2019 certificate of lawful use

- 3.4. As detailed in the statutory declaration of Mr Martyn Grant (accompanying this submission), from 17 September 2019, the lower ground floor of the building has been sub-divided into 2 no. self-contained dwellings and used as such accordingly. Both flats benefit from bathroom, kitchen and bedroom / living facilities. Their layout (which has remained unaltered since 16 September 2019) is illustrated on the floor plan extracted over the page.



Lower Ground Floor Plan of 6 Eldon Road

- 3.5. For reference purposes, the applicant refers to the 2 no. self-contained flats as the basement flat (located at the front) and garden flat (located at the rear). A view of the building's front elevation, with the lower ground floor of the building visible is provided below.



Front Elevation of 6 Eldon Road

- 3.6. The entrance to the basement flat is provided by going down some steps. It is shown on the image below.



View of entrance to the basement flat

- 3.7. Finally, a view inside the basement flat is provided below.



View inside the basement flat

3.8. Views of the rear and flank elevations of the building are provided below.



Rear Elevation of 6 Eldon Road



Side Elevation of 6 Eldon Road

- 3.7. The entrance to the garden flat is provided by going down some steps (located to the rear of the building) and is signed accordingly. Views of both are provided on the images below.



Garden Flat Sign

3.9. Finally, some views of inside the garden flat are provided below.



Views inside the garden flat

4. ASSESSMENT OF THE ISSUE

- 4.1. With regard to the above context, the main issue (and associated evidence) is now considered. Namely, is there any evidence to contradict or otherwise make the appellant's version events less than probable. If there is not, the certificate should be granted.

The Application Form

- 4.2. In section 4 of the application form, the applicant confirms the application is for "An existing use" and that the use applied for is 2 no. self contained Use Class C3 – Dwellinghouses.
- 4.3. In section 5 of the application form, the Description of the Existing Use is "The existing lower ground floor has been sub-divided and used as 2 separate independent self-contained dwelling houses for more than 4 years". The form confirms that the use as 2 no. separate self-contained dwelling houses has occurred for 4 continuous years since 17th September 2019.

The Existing Plans

- 4.4. As can be seen from the existing plan, the lower ground floor of the building forms 2 no. self-contained flats. Each flat includes an open plan bedroom / living area, kitchen area, shower and bathroom and separate main entrances. Each flat is arranged to allow for comfortable independent living. They are referred to by the applicant as the basement flat and garden flat respectively.

Statutory Declaration – Martyn Grant (owner)

- 4.5. A statutory declaration has been prepared by Martyn Grant. Such a declaration is of course of a written statement of fact signed in the presence of a solicitor and made pursuant to the Statutory Declarations Act 1835. Making a false statement can comprise a criminal offence and it therefore forms a legal document that carries significant weight.
- 4.6. The declaration confirms that Mr Grant purchased the property on 17th June 2019 through his property company, Addington Properties Limited. It confirms

that Mr Grant converted the previous single lower ground floor flat to 2 no. independent self-contained flats during the period 12 to 16 September 2019. On 16 September 2019, a Mr Karim Ishmal moved into the basement flat and then on 17th September 2019, a Mr Hamid Oulhaj moved into the garden flat. It follows that from 17 September 2019, the lower ground floor of the building has been used as 2 no. separate self-contained dwellings. Mr Grant's statutory declaration provides a detailed chronology of how both independent flats have been used throughout the relevant 4 year period. This includes copies of assured shorthold tenancy agreements, deposit transactions and rental receipts over the relevant period. In the limited circumstances where residents have missed rental payments, an explanation is included as to why.

Letter from Property Agent

- 4.7. Mr Grant's statutory declaration is further supported by a letter from Lansley Property Agents who confirm that Mr Grant's statutory declaration is precise and correct in their letter supporting this submission. It further confirms the sub-division of the lower ground floor to 2 independent flats since early to mid-September 2019.

Latest Situation on Site

- 4.8. For completeness, it is noted that both flats continue to be resided in on an independent and self-contained basis by a Mr Robin (in the basement flat) and a Mr Walsh (in the garden flat) today.

Relevant Analysis

- 4.9. The relevant test must be remembered for this application. Namely, if a Local Planning Authority has no evidence itself, nor from any others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.
- 4.10. The site context evidences its use as 2 no. separate residential dwellings. Each flat's layout is clearly set up for separate residential dwelling use including bedroom, living and kitchen space and separate toilet / shower accommodation. Each flat is accessed separately from the front and rear of

the building respectively. Various evidence relating to tenancy agreements and rental receipts have been submitted. In particular, a comprehensive and detailed statutory declaration has been prepared by the owner. The statutory declaration provides legally recorded and comprehensive information to confirm the continuous use of the lower ground floor as 2 no. self contained residential dwellings over a period that exceeds the relevant 4 year period. Details of the tenants, rental records and expenditure details are comprehensively included.

- 4.11. During the relevant immunity period, two tenants have lived in the basement flat (a Mr Ishmal and a Mr Robin) and 3 tenants have lived in the garden flat (a Mr Oulhaj, a Miss Martins and a Mr Walsh). The gaps between tenancies have at the longest extended to 12 days and are entirely normal in the course of a letting history where one would expect periods of this length (or longer), when a property is not let during the process of finding a new tenant to move in.
- 4.12. Established case law confirms that de minimis breaks are allowed within the four year period. For example, when a factory is shut over the Christmas period or a school may be on its summer holiday. Such a building may lay unused for a certain period, but the building could still be precisely described as being used for the objectional activity at that time. The same occurs with the short gaps between tenants where the residential subdivision of the lower ground floor would have remained clearly evident. Further and contextually, the other flat would have still been occupied given there was no point where a break in tenant occurred at both flats at the same time. An allowed appeal decision relating to a proposal at 85 Newington Green Road (PINS Ref. 3195479) further assists in the consideration of this matter. Paragraph 11 of the decision refers to a break in residential occupation of the relevant building between 10 October 2013 and 3 May 2014, a period of almost 7 months. At this time renovation works were occurring to the property and an advertisement was placed for a new tenant. Paragraph 17 of the decision confirms the Inspector's judgment, that a 7 month occupation break did not

harm the continuous use of the property as a dwelling and the appeal was allowed accordingly:

As a matter of fact and degree, I concur with the appellant that the lack of occupation of the flat due to renovation, and the subsequent search for a new tenant did not harm the continuous use of the property as a dwelling.

- 4.13. Given the gaps between tenancies in this case are very short, this in no way harms the continuous use of the lower ground floor as 2 no. dwellings. Further, enforcement action could have been taken at a time during the relevant 4 year period. The physical subdivision would have been clearly evident upon visiting the site, the separate residential dwellings would have been in situ and the occupation of at least one flat independently from the other would have been occurring at any point.
- 4.14. It has therefore been demonstrated that as a matter of fact and degree and on the clear balance of probability (supported by a statutory declaration taken on oath) that the use of lower ground floor as 2 no. self-contained independent dwellings since 17 September 2019 has occurred. Accordingly, the Certificate of Lawful use can be appropriately granted.

5. CONCLUSION

- 5.1. The submission provides sound evidenced reasons for granting the certificate of lawful use of the lower ground floor of 6 Eldon Road as 2 no. self contained residential dwellings. Accordingly, the Certificate of Lawful use can be appropriately granted.
