

HEAD OFFICE

71 - 75 SHELTON STREET
COVENT GARDEN,
LONDON,
WC2H 9JQ



LOCAL OFFICE

CROWN HOUSE HOME GARDENS
DARTFORD
KENT
DA1 1DZ

**TOWN AND COUNTRY PLANNING ACT 1990
(AS AMENDED BY THE PLANNING AND COMPULSORY PURCHASE ACT
2004)
SECTION 78 APPEAL.**

**STATEMENT OF CASE ON BEHALF
OF THE APPELLANT**

APPELLANT : MR J GOULD
APPEAL SITE : 48 GOULDS GREEN HILLINGDON
OUR REF : B1777/2023
LPA REF : 70466/APP/2022/3247
DATE : DECEMBER 2023

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3. Appendix C - Council's Decision Notice.

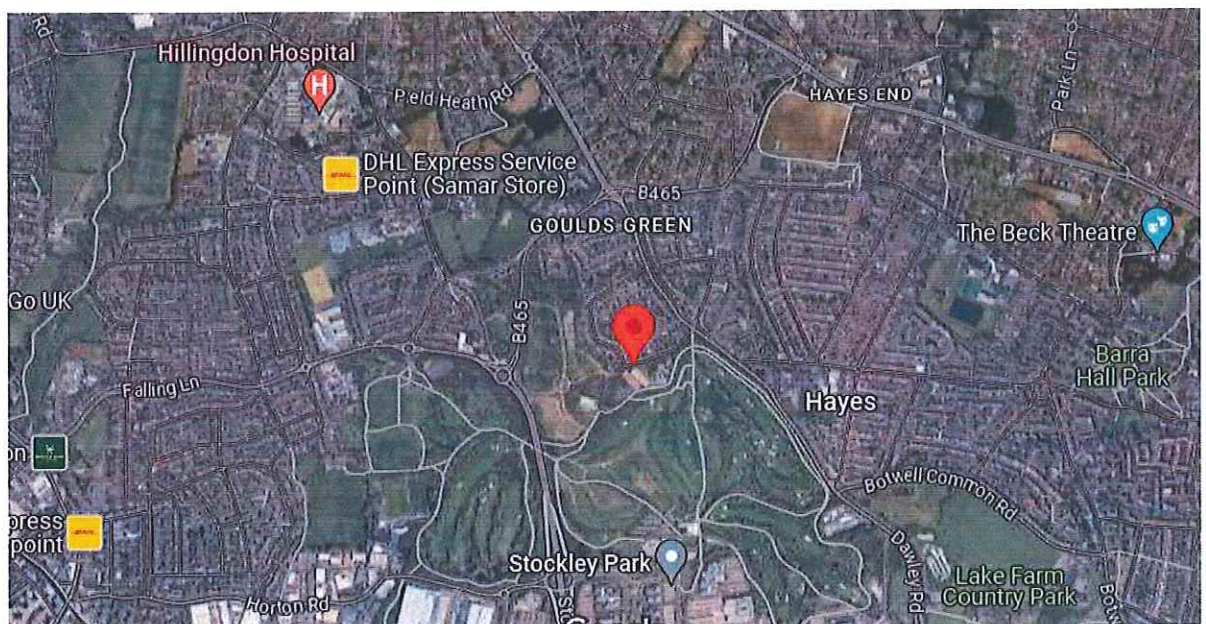
1.0 **INTRODUCTION**

London Borough of Hillingdon refused permission at 48 Goulds Green Hillingdon, on the 14 September 2023, application reference 70466/APP/2022/3247, for the existing use of outbuilding as a self-contained flat (Application for a Certificate of Lawful Development for an Existing Use) on the following grounds:

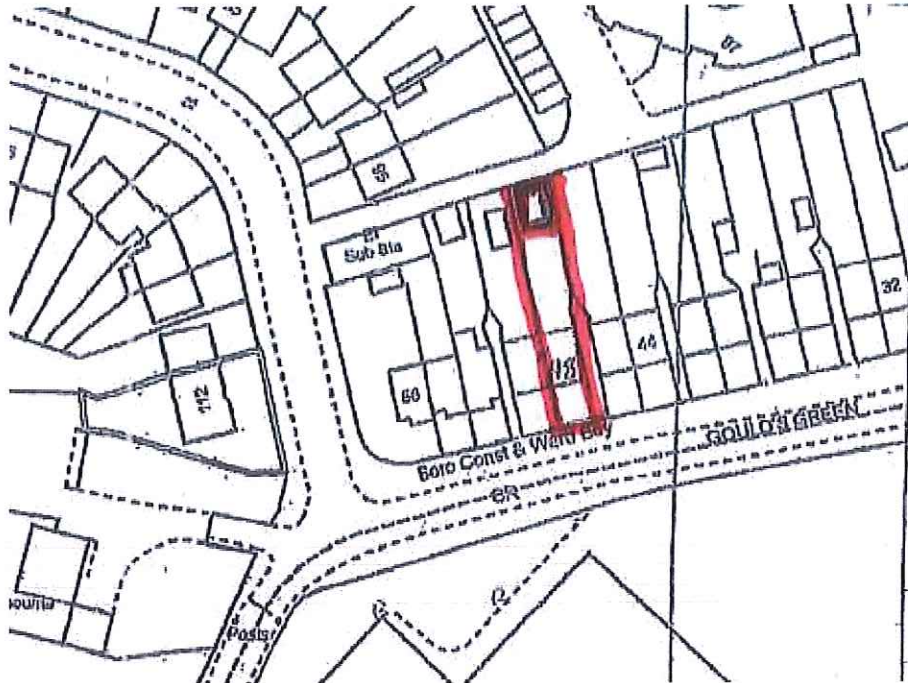
"The existing development does not constitute Lawful Development under Section 191 of Town and Country Planning Act 1990, as amended by Section 10 of the Planning and Compensation Act 1991 as the Applicant has not demonstrated that, on the balance of probabilities, the use has existed and been continuous for at least a period of four years, prior to the date of this application".

2.0 **THE SITE LOCATION AND DESCRIPTION**

- 2.1 The appeal site is located the northern side of Goulds Green relates to the rear garden of a two-storey semi-detached dwelling.

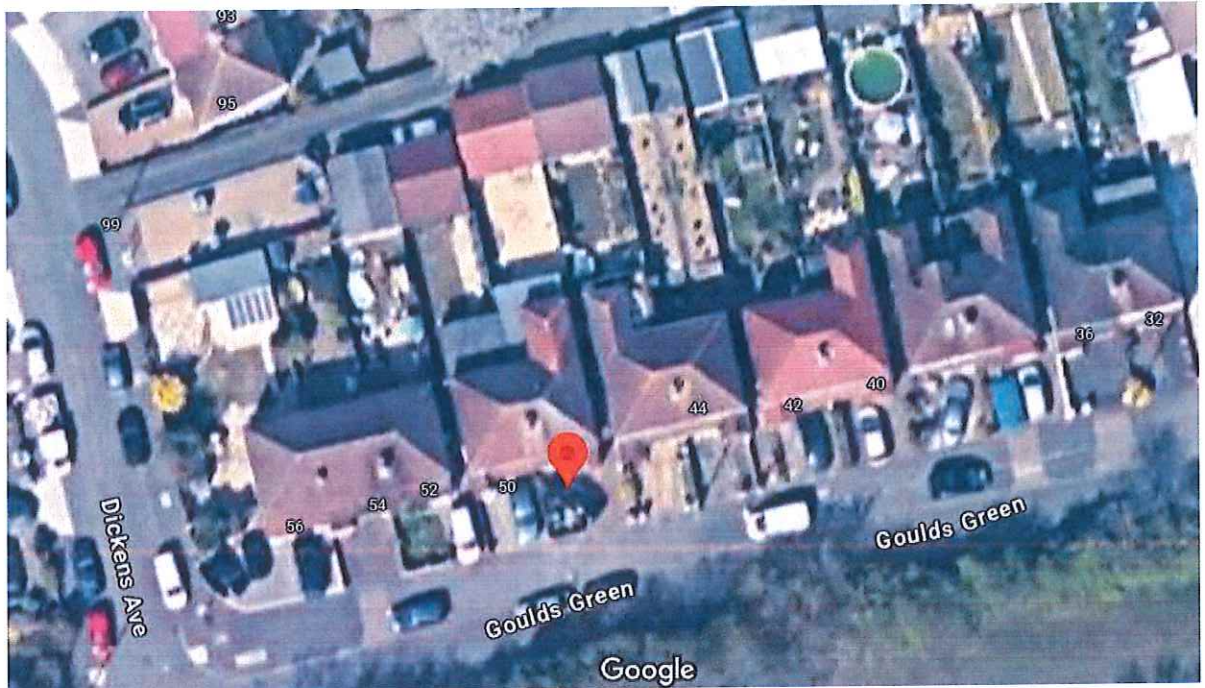


- 2.2 The site is located in a developed area as identified in the Hillingdon Local Plan and it not located within a Conservation Area or any special designations.



3.0 THE APPEAL PROPOSAL

- 3.1 The appellant seeks a certificate of lawful development for the existing use of outbuilding as a self-contained flat.



3.2 Copies of the planning application forms submitted to the Council are enclosed in Appendix B. The floor plans, elevations and location plan drawings are also enclosed.

3.3 70466/APP/2022/1757- Existing use of outbuilding as separate accommodation (Application for a Certificate of Lawful Development for an Existing Use).

3.4 70466/APP/2014/4213- Single storey detached outbuilding to be used as a gym- approved 25.02.15

4.0 **POLICY CONSIDERATIONS**

4.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 gives priority to the provisions of development plans in determining planning applications and appeals as well as all other material considerations.

- 4.2 The Planning law requires **that applications for planning permission be determined in accordance with the development plan**, unless material considerations indicate otherwise. **The revised National Planning Policy Framework which came into force in 2021 must be taken into account in preparing the development plan, and is a material consideration in planning decisions.** Planning policies and decisions must also reflect relevant international obligations and statutory requirements.
- 4.3 Advice in Paragraph 38 of NPPF highlights that Local planning authorities should approach decisions on proposed development in a **positive and creative way**. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. **Decision-makers at every level should seek to approve applications for sustainable development where possible.**
- 4.4 Advice in Paragraph 56 of NPPF underscores that, Local planning authorities should consider whether otherwise **unacceptable development could be made acceptable through the use of conditions or planning obligations**. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
- 4.5 Advice in Paragraph 119 highlights that Planning policies and decisions should **promote an effective use of land in meeting the need for homes and other uses**, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield'.

4.6 Advice in Paragraph 120 requires that Planning policies and decisions should:

a) **encourage multiple benefits from both urban and rural land**, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside;

b) recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production;

c) **give substantial weight to the value of using suitable brownfield land within settlements** for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

d) **promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing** where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure)⁴⁵; and

e) support opportunities to **use the airspace above existing residential and commercial premises for new homes**. In particular, they should **allow upward extensions** where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers.

4.7 Advice in paragraph 122 states that Planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land

availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

a) they should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and

b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area

4.8 Advice in paragraph 124 states that **Planning policies and decisions should support development that makes efficient use of land, taking into account:**

a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;

b) local market conditions and viability;

c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;

d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and

e) the importance of securing well-designed, attractive and healthy places.

4.9 Advice in paragraph 125 states Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions **avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site.** In these circumstances:

a) plans should contain policies to optimise the use of land in their area and **meet as much of the identified need for housing as possible**. This will be tested robustly at examination, and should include the use of minimum density standards for city and town centres and other locations that are well served by public transport. These standards should seek a significant uplift in the average density of residential development within these areas, unless it can be shown that there are strong reasons why this would be inappropriate;

b) **the use of minimum density standards should also be considered for other parts of the plan area**. It may be appropriate to set out a range of densities that reflect the accessibility and potential of different areas, rather than one broad density range; and

c) **local planning authorities should refuse applications which they consider fail to make efficient use of land**, taking into account the policies in this Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).

4.10 Underlining these principles is advice in paragraph 126 of the revised NPPF 2021 which underscores that "The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. **Good design is a key aspect of sustainable development**, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process".

4.11 Advice in paragraph 130 of NPPF states that Planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, **while not preventing or discouraging appropriate innovation or change (such as increased densities);**
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- e) **optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development** (including green and other public space) and support local facilities and transport networks.

4.12 Advice in paragraph 130 of NPPF states Permission should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents which use visual tools such as design guides and codes. Conversely, where the design of a development accords with clear expectations in plan policies, design should not be used by the decision-maker as a valid reason to object to development. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).

4.13 The development plan comprises the following documents:

- The Local Plan
- The London Plan

However, due to the nature of this appeal, the discussion will be based on whether or not the use has been operating for a period of 4 years prior to the submission of the planning application.

5.0 THE PLANNING CONSIDERATIONS

5.1 *Optimising land*

The National Planning Policy Framework (NPPF 2021) applies a presumption in favour of sustainable development. As such, a balanced approach should be applied in the assessment of the proposed development and whether the potential harm the development might cause 'significantly and demonstrably' outweighs the potential positive outcomes of the development as a whole.

5.2 Paragraph 119 of the NPPF states: "*Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land*".

5.3 In this instance, it is considered that the harm identified does not significantly and demonstrably outweigh the benefits of the scheme when assessed against the Framework.

5.4 Notwithstanding the above, in accordance with s171B(2) of the Town and Country Planning Act '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.'



- 5.5 The time period to establish lawful development is therefore 4 years for a residential dwelling as confirmed by the Supreme Court ruling *First Secretary of State v Arun District Council and Another*: CA 10 Aug 2006 ([2006] EWCA Civ 1172).
- 5.6 In this regards the development is immune from enforcement.
- 5.7 The outbuilding known as the Annexe at the rear of 48 Goulds Green, Uxbridge, UB8 3DG has been used as sleeping accommodation as a self-contained flat since 27 April 2016 where it was then used as rented flat accommodation from 10 October 2018 until present. During the councils own site visits they witnessed that the property was not unoccupied and was being used as residential accommodation.
- 5.8 The use as a single dwelling house began more than four years before the date of this application; the use began 27-04-2016.
- 5.9 Numerous invoices were submitted, evidencing the purchase of building materials.

- 5.10 A signed Building Work Agreement (dated February/March 2015) was also provided, confirming that the outbuilding was to be constructed at the rear of application site.
- 5.11 It is also confirmed within the appellants statutory declaration that since April 2016, the outbuilding has been used as a single dwelling.
- 5.12 Other statutory declarations provided in support of the application state that the outbuilding was used independently by the applicant, and former occupants confirmed their occupation of the outbuilding between October 2018 and 2020.
- 5.13 Council Tax records and letters from the Valuation Office Agency refer to the "Annexe r/o 48 Goulds Green" and confirm that the outbuilding is self-contained.
- 5.14 In addition the following documents have also been provided:
- Tenancy Agreements
 - Rent receipts submitted cover majority of the 4-year period
- 5.15 The above evidence demonstrates that on the balance of probability, the building was in continuous use as an independent dwelling for the relevant period of 4 years.

6.0 CONCLUSIONS

- 6.1 Taking into account the above, the evidence provided indicates that the outbuilding has been used as a self-contained dwelling continuously for the stated 4- year period.
- 6.2 In these circumstances, the Inspector is respectfully requested to uphold the appeal and allow for the grant of planning permission for the existing development.

APPENDIX A

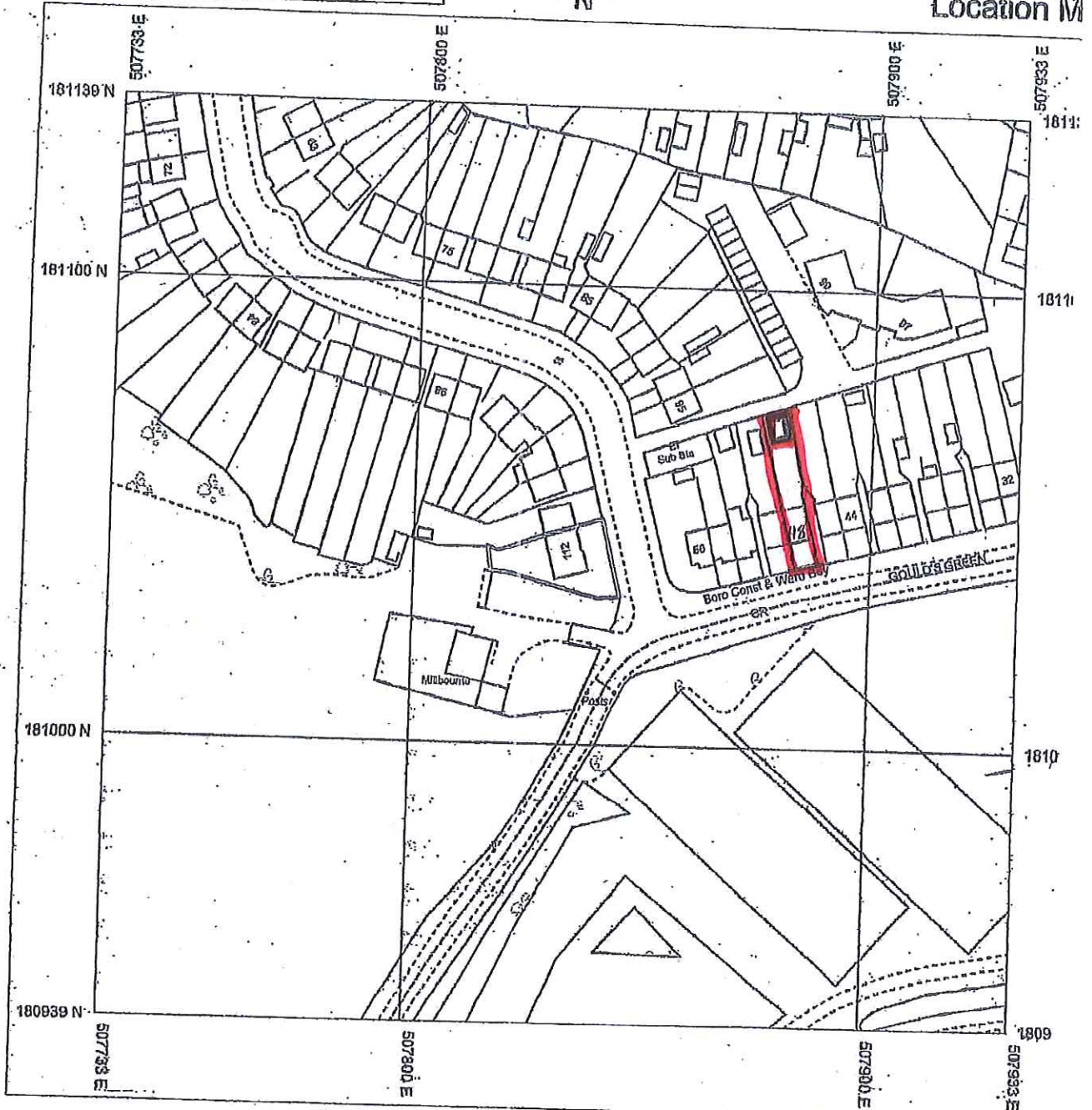
Mapping
Sourced from



Ordnance
Survey®



Location M



48 Goulds Green

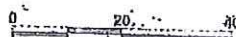
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surveyed revision available at this date. © Crown
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trademarks of Ordnance Survey, the national mapping
agency of Great Britain.

The representation of a road, track or path is no
evidence of a right of way.

The representation of features as lines is no evidence
of a property boundary.



Scale 1:1250

Supplied By: NFS

Serial number: 001106533

Plot Centre Coordinates: 507833, 181039

APPENDIX B



London Borough of Hillingdon, Residents Services, 3N Civic Centre, High Street, Uxbridge, Middlesex UB8 1UW
Tel: 01895 250230 Web: www.hillingdon.gov.uk

**Application for a Lawful Development Certificate for an Existing Use or Operation or Activity,
including those in breach of a planning condition**

Town and Country Planning Act 1990 (as amended)

Publication of applications on planning authority websites

Please note that the information provided on this application form and in supporting documents may be published on the Authority's website. If you require any further clarification, please contact the Authority's planning department.

Site Location

Disclaimer: We can only make recommendations based on the answers given in the questions.

If you cannot provide a postcode, the description of site location must be completed. Please provide the most accurate site description you can, to help locate the site - for example "field to the North of the Post Office".

Number

48

Suffix

Property Name

Address Line 1

Goulds Green

Address Line 2

Address Line 3

Hillingdon

Town/city

Uxbridge

Postcode

UB8 3DG

Description of site location must be completed if postcode is not known:

Easting (x)

507884

Northing (y)

181048

Description

Applicant Details

Name/Company

Title

Mr

First name

J

Surname

Gould

Company Name

Address

Address line 1

48 Goults Green

Address line 2

Address line 3

Hillingdon

Town/City

Uxbridge

Country

Postcode

UB8 3DG

Are you an agent acting on behalf of the applicant?

☒ Yes

☐ No

Contact Details

Primary number

Secondary number

Fax number

Email address

Agent Details

Name/Company

Title

First name

Surname

Company Name

Address

Address line 1

Address line 2

Address line 3

Town/City

Country

Postcode

Contact Details

Primary number

Secondary number

Fax number

Email address

***** REDACTED *****

Reason for Lawful Development Certificate

Please indicate why you are applying for a lawful development certificate

- ☒ An existing use
☐ Existing building works
☐ An existing use, building work or activity in breach of a condition

Being a use, building works or activity which is still going on at the date of this application.

If Yes, to either 'an existing use' or 'an existing use in breach of a condition', please select the relevant Use Class.

C3 - Dwellinghouses

Please note that following changes to Use Classes on 1 September 2020: The list includes the now revoked Use Classes A1-5, B1, and D1-2 that should not be used in most cases. Also, the list does not include the newly introduced Use Classes E and F1-2. To provide details in relation to these or any 'Sui Generis' use, select 'Other' and specify the use where prompted. [View more details on Use Classes](#).

Description of Existing Use, Building Works or Activity

Please fully describe each existing use, building works or activity for which you want the lawful development certificate. Where appropriate, show to which part of the land each use, building works or activity relates

The outbuilding known as the Annexe at the rear of 48 Goults Green, Uxbridge, UB8 3DG has been used as sleeping accommodation as a self-contained flat since 27 April 2016 where it was then used as rented flat accommodation from 10 October 2018 until present.

Grounds for application for a Lawful Development Certificate

Under what grounds is the certificate being sought

- ☐ The use began more than 10 years before the date of this application
☐ The use, building works or activity in breach of condition began more than 10 years before the date of this application
☐ The use began within the last 10 years, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last 10 years
☐ The building works (for instance, building or engineering works) were substantially completed more than four years before the date of this application.
☒ The use as a single dwelling house began more than four years before the date of this application
☐ Other - please specify (this might include claims that the change of use or building work was not development, or that it benefited from planning permission granted under the Act or by the General Permitted Development Order).

Is the certificate being sought for a use, operation, or activity in breach of a condition or limitation?

- ☐ Yes
☒ No

Please state why a Lawful Development Certificate should be granted

The continued use of the building as accommodation for a time period of greater than 4 years is lawful.

Information in support of a Lawful Development Certificate

When was the use or activity begun, or the building works substantially completed (date must be pre-application submission)?

27-04-2016

In the case of an existing use or activity in breach of conditions has there been any interruption?

☐ Yes

☒ No

In the case of an existing use of land, has there been any material change of use of the land since the start of the use for which a certificate is sought?

☐ Yes

☒ No

Residential Information

Does the application for a certificate relate to a residential use where the number of residential units has changed?

☐ Yes

☒ No

Site information

Please note: This question is specific to applications within the Greater London area.

The Mayor can request relevant information about spatial planning in Greater London under [Section 346 of the Greater London Authority Act 1999](#).

[View more information on the collection of this additional data and assistance with providing an accurate response.](#)

Title number(s)

Please add the title number(s) for the existing building(s) on the site. If the site has no title numbers, please enter "Unregistered".

Title Number:
unknown

Energy Performance Certificate

Do any of the buildings on the application site have an Energy Performance Certificate (EPC)?

☐ Yes

☒ No

Further information about the Proposed Development

Please note: This question is specific to applications within the Greater London area.

The Mayor can request relevant information about spatial planning in Greater London under [Section 346 of the Greater London Authority Act 1999](#).

[View more information on the collection of this additional data and assistance with providing an accurate response.](#)

What is the Gross Internal Area to be added to the development?

0.00	square metres
------	---------------

Number of additional bedrooms proposed

0

Number of additional bathrooms proposed

0

Vehicle Parking

Please note: This question contains additional requirements specific to applications within Greater London.

The Mayor can request relevant information about spatial planning in Greater London under [Section 346 of the Greater London Authority Act 1999](#).

[View more information on the collection of this additional data and assistance with providing an accurate response.](#)

Does the site have any existing vehicle/cycle parking spaces or will the proposed development add/remove any parking spaces?

- ☐ Yes
☒ No

Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land?

- ☒ Yes
☐ No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact?

- ☒ The agent
☐ The applicant
☐ Other person

Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application?

- ☐ Yes
☒ No

Interest in the Land

Please state the applicant's interest in the land

- ☒ Owner
☐ Lessee
☐ Occupier
☐ Other

Authority Employee/Member

With respect to the Authority, is the applicant and/or agent one of the following:

- (a) a member of staff
(b) an elected member
(c) related to a member of staff
(d) related to an elected member

It is an important principle of decision-making that the process is open and transparent.

For the purposes of this question, "related to" means related, by birth or otherwise, closely enough that a fair-minded and informed observer, having considered the facts, would conclude that there was bias on the part of the decision-maker in the Local Planning Authority.

Do any of the above statements apply?

- ☐ Yes
☒ No

Declaration

I / We hereby apply for Lawful development: Existing use as described in this form and accompanying plans/drawings and additional information. I / We confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine options of the persons giving them. I / We also accept that: Once submitted, this information will be transmitted to the Local Planning Authority and, once validated by them, be made available as part of a public register and on the authority's website; our system will automatically generate and send you emails in regard to the submission of this application.

☒ I / We agree to the outlined declaration

Signed

A MARTIN

Date

19/10/2022

APPENDIX C



**Sections 191 and 192
(as amended by section 10 of the Planning and Compensation Act 1991)**

**TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 2015
ARTICLE 39**

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Mr A MARTIN
Lyondale
Crown House
Home Gardens
Dartford
DA1 1DZ

Application Ref: **70466/APP/2022/3247**

In pursuance of their powers under the above mentioned Act and Order, the London Borough of Hillingdon (The Council) as Local Planning Authority hereby **REFUSE** your application for a Certificate of Lawful Use or development under section 191 of the Act.

Description of development: Existing use of outbuilding as a self-contained flat (Application for a Certificate of Lawful Development for an Existing Use)

Location of development: 48 Goults Green Hillingdon

Date of application: 24th October 2022

Plan Numbers: See attached Schedule of plans

The grounds for the Council's decision are listed on the attached schedule:-

R Schen

Head of Development Management and Building Control

Date: 14 September 2023

NOTES: Your attention is drawn to the attached sheet which sets out the rights of applicants who are aggrieved by the decision of the Local Planning Authority.

Sections 191 and 192
(as amended by section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 2015
ARTICLE 39

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Application Ref: 70466/APP/2022/3247

SCHEDULE

The grounds for the Council's decision are as follows:-

Reason for Refusal:

- 1 The existing development does not constitute Lawful Development under Section 191 of Town and Country Planning Act 1990, as amended by Section 10 of the Planning and Compensation Act 1991 as the Applicant has not demonstrated that, on the balance of probabilities, the use has existed and been continuous for at least a period of four years, prior to the date of this application.

This determination is based on your submitted plans. All measurements are taken from existing ground level.

INFORMATIVES

END OF SCHEDULE

Address:

Development Management
Directorate of Place
Hillingdon Council
3 North, Civic Centre, High Street, Uxbridge UB8 1UW
www.hillingdon.gov.uk

**Sections 191 and 192
(as amended by section 10 of the Planning and Compensation Act 1991)**

**TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 2015
ARTICLE 39**

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

Application Ref: 70466/APP/2022/3247

SCHEDULE OF PLANS

Statutory Declaration- 1. - received 25 Oct 2022

Statutory Declaration 2 - received 25 Oct 2022

Statutory Declaration 3 - received 25 Oct 2022

location plan - received 24 Oct 2022

**RIGHTS OF APPLICANTS AGGRIEVED BY DECISION
OF LOCAL PLANNING AUTHORITY**

TOWN AND COUNTRY PLANNING ACT 1990

Application for Certificate of Lawfulness

Notes

If you are aggrieved by the decision of the Local Planning Authority to refuse an application for a certificate under Sections 191 or 192 of the Town and Country Planning Act 1990 (as amended) or to refuse it in part, you may appeal to the Department of Communities and Local Government (DCLG), under Section 195 of the Act (as amended).

Notice of appeal must be given in writing to the Planning Inspectorate, 3/02 Kite Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN (Tel; - 0117 372 8428). Appeal forms can be downloaded from the Planning Inspectorate's website at <http://www.planning-inspectorate.gov.uk>. Copies of all relevant documents, including the application, the notice of decision and all plans, drawings and correspondence, must be supplied to the Inspectorate.

You are advised to consult the brief official guide and appeals, published by the Department of Communities and Local Government (DCLG), this and appeal forms can be obtained from the Planning Inspectorate on request.

Address:

Development Management
Directorate of Place
Hillingdon Council
3 North, Civic Centre, High Street, Uxbridge UB8 1UW
www.hillingdon.gov.uk