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APPEAL STATEMENT

APPELLANT: Krish Lakshmiopathy

SITE: 5A Primrose Gardens, Ruislip, HA4 6TY

APPEAL DESCRIPTION: Appeal against the refusal to grant a Certificate of Lawful Development to regularise the sub-division of an existing semi-detached house at 5 Primrose Gardens to provide a new flat No. 5A (Certificate of Lawful Development for an Existing Development)

LOCAL PLANNING AUTHORITY: Hillingdon Council

REFERENCE: 1380/APP/2023/3184

Application Description:

This statement has been prepared to support an appeal in respect of the decision made by Hillingdon Borough Council to refuse to grant a Lawful Development Certificate for an Existing Development in respect of the creation of an additional residential dwelling at 5 Primrose Gardens Ruislip ("the Property") submitted in accordance with section 191 of the Town and Country Planning Act 1990, as amended. The Local Planning Authority's reference in respect of the application is 1380/APP/2023/3184.

The application was submitted in order to obtain a Certificate of Lawful Development in respect of the existing use as an independent self-contained dwelling. There was just one refusal reason cited by Hillingdon Borough Council in that they stated that the Applicant had not demonstrated that, on the balance of probability, the use had existed and been continuous for a least a period of four years prior to the date of the application. Therefore, a lawful development certificate was not issued.

We will address this refusal reason below in this appeal statement in order to demonstrate why this appeal should be allowed and the Certificate of Lawful Development granted.

HEAL Planning was not involved in the application process and is now instructed by the appellant as the agent to handle the appeal on their behalf. During this process, we have worked with the appellant to ensure their evidence is presented as clearly as possible, streamlining the evidence in order to ensure the focus is on the four-year period required by the legislation. Having worked with the appellant, we are submitting sworn statutory declarations in order to present the appellant's evidence clearly. A significant amount of corroborating evidence is also being submitted for consideration in support of the applicant's position. We are of the view that this will assist the Planning Inspector in considering this appeal.

The purpose of this appeal statement is to provide clear and unambiguous evidence to demonstrate that the appellant has used the dwelling at 5A Primrose Gardens as an independent dwelling for a continuous period of in fact 5 years.

The Town and Country Planning (Use Classes) Order 1987 (as amended) defines "Use Classes" for land and buildings. In this case, the property use should fall within Use Class C3. Under the use classes order of the Town And Country Planning (Use Classes) Order 1987 (As Amended), Use Class C3 is defined as use as a dwellinghouse.

In order to satisfy a Local Planning Authority and the Planning Inspectorate that a Certificate should be granted, the Courts have held that the relevant test of the evidence submitted by an applicant should be the civil law test of the balance of probability. We will demonstrate throughout this appeal statement that this test is unequivocally met when considering the overwhelming evidence presented and that when assessing the appeal, it must be done so based on the evidence alone rather than considering planning merits or planning policy in force as this is irrelevant.

Based on the strength of the evidence presented and the fact that the evidence is corroborated, even though legally it need not be, the use of the building as an independent

residential dwelling has been continuous for over 10 years and there can be no doubt about this.

Background and Description:

The appellant purchased the Property in 2016. The full extent of the Property is registered under Title Number MX119051 at HM Land Registry.

The plan below shows the dwelling edged red (**Referred to as the Appeal Site in this statement**).



The plan below shows the dwelling created in 2019 now known as 5A Primrose Gardens



The Appellant obtained planning permission under reference 61380/APP/2018/2364 to add a single storey extension following demolition of an existing garage on the 8th August 2018. The works were completed in May 2019 as evidenced in the Statutory Declaration provided by the Appellant.

The Appellant seeks a Lawful Development Certificate under Section 191 of The Town and Country Planning Act 1990 in order to confirm the use of Appeal Site on the property has been independent from the main dwelling for a period in excess of four years.

The dwelling itself consists of an open plan living and kitchen area, bathroom and 1 bedroom. There is a communal access with the existing dwelling at number 5. The property has access to communal garden with number 5 via a door to the rear.

5A has its own electricity supply and meter which was installed in 2018 (Appendix 7 will evidence this). It was formally signed off by building regulations in September 2019 (Appendix 6 will evidence this)

The property was first tenanted in May 2019 with subsequent tenancies up to the present date as detailed below:

Sandra Hejner and Pawel Piotrowski from May 2019 until March 2020. There a small gap here due to lockdown restrictions during Covid. The property was actively advertised for an new tenant and cleaned and decorated during this time.

The new tenant Wing Sze Yuan took up resident in July 2020 and their tenancy ended on the 19th December 2021. The property was then immediately occupied by Salvatore Cozzella who remained in occupation until April 2022. Mr Cozzella paid his rent in cash. He left the property in quite a state with fittings needing to be repaired. During the two months it was vacant, the property was advertised, repaired, cleaned and decorated during this time.

The current tenant Graham Rennie moved into the property in June 2022.

The earlier tenants paid rent inclusive of utilities. However, the current tenant pays for his own electricity supply. The current tenant is now also registered for his own council tax for the dwelling.

A summary of the tenancies is shown below:

Start Date	End Date	Tenant	Comments
16.5.2019	28.3.2020	Hejnar & Piotrowski	Left during Covid Lockdown restrictions
4.7.2020	19.12.2021	Wing Yuan	
20.12.2021	3.4.2022	Cozzella	Paid rent in cash and left leaving the property In a mess
23.6.2022	to date	Rennie	Pays his own electricity and council tax for the dwelling

Extract tenancy agreements/deeds of guarantee will accompany this appeal statement to evidence the above (Appendix 5)

Photographs will accompany this appeal statement (Appendix 4)

The Legislation and Burden of Proof:

As previously explained at the outset of this statement, the appellant is seeking a Lawful Development Certificate under Section 191 of The Town and Country Planning Act 1990 in respect of the use of the Appeal Site as an independent residential dwelling.

Section 191(1)(a) of The Town and Country Planning Act 1990 states that if any person wishes to ascertain whether any existing use of a building or land is lawful, they may make an application to the Local Planning Authority specifying the land and describing the use.

Section 191(2) of The Town and Country Planning Act 1990 stipulates that for the purposes of the Act, a use is lawful if the time for taking enforcement action has expired and they do not contravene any of the requirements of an enforcement notice in force. Applying this section of the legislation to the facts of the appeal, we can clearly demonstrate in the evidence presented that the use of the Appeal Site as an independent residential dwelling has been continuous for over four years and therefore, the time for taking enforcement action has expired and as no enforcement notice has been issued in respect of the Appeal Site a certificate of lawful use can be issued.

Section 191(4) of The Town and Country Planning Act 1990 sets out that if, on an application the Local Planning Authority is presented with information satisfying them of the lawfulness at the time of the application of the use, they shall issue a Lawful Development Certificate. Based on the weight of the evidence presented in this appeal statement, we are confident the Planning Inspectorate will be satisfied that the use of the Property is lawful and a certificate should be granted.

Guidance states that *“where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is “the balance of probability”. As this test will accordingly be applied by the Secretary of State in any appeal against their decision, an LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely “beyond reasonable doubt”. Moreover, the Court has held (see 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. If the LPA have no evidence of their own, or 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".

Upon assessment of the evidence presented in this statement, it will become clear that the appellant has exceeded the burden of proof considerably as on the balance of probabilities, it is clear the Appeal Site has been an independent residential dwelling for the 4 years required by legislation.

Evidence in support of the appeal:

1. Statutory Declarations

To support this appeal, Statutory Declarations have been sworn by the following:

- The Appellant: Krish Lakshmipathy
- Current Tenant: Graham Rennie
- Former Tenant: Wing Sze Yuan
- Friend of the Appellant: Jaydeep Hota

2. Physical Layout

The Appellant extended the property under planning permission 61380/APP/2018/2364 to add a single storey extension following demolition of an existing garage on the 8th August 2018. The property has been continually occupied by paying tenants for a period of 5 years from May 2019

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3. Use

Tenancy occupation from May 2019 to date of the dwelling is detailed below:

From May 2019 to End March 2020

Sandra Hejnar and Pawal Piotrowski paying a rent of £1150 pcm inclusive of utilities

From July 2020 to December 2021

Wing Sze Yuan paying a rent inclusive of utilities in sum of £1000 pcm

From December 2021 until April 2022

Salvatore Cozzella paying a rent inclusive of utilities in the sum of £900 pcm in cash (tenancy agreement cannot be located but guarantee deed has been provided)

From June 2022 to Date

Grahm Rennie paying a rent inclusive of water rates in the sum of £1025 pcm.

Tenants pays for his own electricity. Tenant has his own council tax for the dwelling.

Extract tenancy agreements/Deed of guarantee will accompany this Appeal statement together with bank statements showing the rent payments being received where available.

Officer's Report:

Heal 's Commentary is provided in Bold

DELEGATED REPORT

ASSESSMENT OF LAWFULNESS

The legal test requires that evidence be provided to show that dwelling unit has been used as independent self contained residential unit for four years, continuously, prior to the date of this application (i.e.2.11.19-02-11-.9.23).

The Council's Legal Officer has been consulted and has advised:

The planning Unit:

The planning unit for Flat 1A

is defined in the application as the red line boundary layout on the plans being the kitchen, bathroom and bedroom. The planning unit is the unit against which the use is tested in law, so the parameters have to be defined. The planning unit has to be a self-contained unit, functioning separately both physically and functionally. There is a front door to the accommodation and also a side door leading into 5 Primrose Gardens from the main house. The certificate alleges that there has been a material change of use from the extension accommodating a granny annexe.

The original planning description is for "Single storey side extension involving demolition of existing garage", this is the authorised use. The plans submitted with the application show the extension as an integral part of the main dwelling with a door from the extension into the main house. It's clear that the permitted extension fell within the planning unit of 5 this is shown on the planning application plans. The change of use is the sub-division and creation of a new planning unit from the original dwelling. I do not consider the extension that was applied for to be an ancillary or secondary use because it was the primary use of the dwelling. This is supported by the application as the house is described as an existing 4 bed unit. **The Appeal Site has its own "front Door" within a communal hallway with number 5 – this is not an unusual set up for "maisonette" style dwellings. The Appeal site has a separate electricity supply and meter and access to a communal garden – again not an unusual set up for this type of conversion.**

In law the planning unit is defined as the unit of occupation this is well established, it was held in *Burdle V Secretary of State for the Environment* 1 W.L.R 1207 that "it may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally". **The appropriate evidence has now been provided to support the appeal application.**

Therefore, it is clear the planning unit applied for is the extension against which the tests for lawfulness of a single dwelling are applied. Evidence of a separate planning unit is the bills that have been paid for 5A, however they are not consistent for 4 years or since 2018. **Sworn statutory declarations from the Appellant together with ones from a former tenant and the current tenant have now been provided. Extract Tenancy Agreement are also provided evidencing the use of the Appeal Site as a separate dwelling for the required period of time.**

Facilities Required

The case law, re *Gravesham v Secretary of State for Environment* (1984) 47 P.C.R.142 and in *Brent LBC v Secretary of State for Levelling Up, Housing and Communities* EWHC (Admin) requires a dwellinghouse to have the facilities and meet the standards required for day to day living. This legal test is applied against the planning unit, the unit of accommodation has a kitchen, living area and shower room, this is evidenced on the plans. The entrance and exit is through the back door leading to the garden, the property is small in size and does not provide a lot of space for the occupant. Therefore, it is questionable if it meets the standards for day to day living. In particular, the building control certificate evidences occupation as a granny annexe and not a residential dwelling. This does not support C3 use. **Planning matters should not form part of a Lawful Development Application which is evidence based. The application should be assessed on the evidence alone rather than considering planning merits or policies in force.**

The electric bills provided do not evidence a residential use of the premises, on balance it is likely to be residential use because this is what has been applied for, however I can't conclude that without evidence, the burden of proof is upon the applicant to satisfy the tests on the balance of probabilities. **Evidence of the installation of the separate Electricity Meter for the Appeal site is now included with this appeal application.**

I suggest the applicant submits a statutory declaration from the occupants stating how long they have occupied the premises for, that it is suitable for day to day living and that it has been used as such for 4 years continuous use. **These are now provided.**

4 years use

The bills provided do not evidence 4 years continuous use as a residential dwelling. The application form and statement does not lift the evidential burden required to meet the legal tests on the balance of probabilities under Section 191 of the Town and Country Planning Act 1990 as stated above.

In conclusion, for the reasons stated above a Certificate should not be granted because on the balance of probabilities the evidence is unclear and ambiguous.

Additional commentary from the planning officer

- The submitted plans indicate that the internal floorspace is 30m². Whilst not determinative in the consideration of the certificate of existing lawful use, it is below the minimum standards for it to be viewed as a studio, single person occupancy dwelling and this would reinforce the original decision. **Planning Matters should not form part of a Lawful Development Application which is evidence based. The application should be assessed on the evidence along rather than considering planning merits or policies in force.**
- There is no evidence of Council tax payments and the Council holds no records **This can be applied for when the separate use has been established and does not evidence that a use has not been occurring.**
- There is no evidence of separate bin storage or collection **As above and again is not evidence that the use has not been occurring on site.**
- The utility bills do not constitute sufficient evidence on their own to demonstrate separate Occupation **Additional evidence has now been provided.**

This appeal application now includes statutory declarations by the Appellant and former tenants of the property together with copy tenancy agreements, plans and photographs to evidence the use of the property as a self-contained dwelling.

The rent payments detailed in the statement corroborate the information from the tenancy agreements that have been entered into. Rent payments were inclusive of utilities to the dwelling.

As detailed above the necessary corroborating evidence is now being provided to show beyond reasonable doubt and on the balance of probabilities the former garage has been a separate independent dwelling from May 2019.

The required evidence and plans are now provided in order that it is now safe to grant the Lawful Development Certificate.

Conclusion:

The evidence presented in this appeal statement is clear, precise and unambiguous and tackles the refusal reason cited by Bournemouth Council. The Appellant's account set out in her sworn Statutory Declaration together with that of the former tenants of the Appeal Site itself outlines the continuous use of the Appeal Site since July 2014. The Appellant's sworn Statutory Declaration should carry enough weight alone however, when taken alongside the sworn Statutory Declarations presented by the other independent third parties as well as the images of the Appeal Site in appendix 2, there really can be no doubt that the Appeal Site is a separate dwelling

It is clear from the strength of the overwhelming evidence presented as part of this appeal that the civil law test of the balance of probabilities test is exceeded. The evidence submitted is compelling and robust and this is enhanced further due to the fact that corroborating evidence is being presented.

Recommendation:

The Inspector is respectfully requested to approve this appeal and grant the certificate of lawful use.

Appendices:

1. Sworn Statutory Declaration – Appellant
2. Sworn Statutory Declarations – Former tenants/friend
3. Plans
4. Site Photographs
5. Extract Tenancy Agreements/Deed of Guarantee
6. Planning permission and Building regulation completion certificate
7. Electricity meter connection
8. Bank Statements showing rent payments received

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