

DELEGATED DECISION

- Please select each of the categories that enables this application to be determined under delegated powers
 - Criteria 1 to 5 or criteria 7 to 9 must be addressed for all categories of application, except for applications for Certificates of Lawfulness, etc.

APPROVAL RECOMMENDED: GENERAL

Select an Option

1.	No valid planning application objection in the form of a petition of 20 or more signatures, has been received	☐
2.	Application complies with all relevant planning policies and is acceptable on planning grounds	☐
3.	There is no Committee resolution for the enforcement action	☐
4.	There is no effect on listed buildings or their settings	☐
5.	The site is not in the Green Belt (but see 11 below)	☐

REFUSAL RECOMMENDED: GENERAL

6.	Application is contrary to relevant planning policies/standards	☐
7.	No petition of 20 or more signatures has been received	☐
8.	Application has not been supported independently by a person/s	☐
9.	The site is not in Green Belt (but see 11 below)	☐

RESIDENTIAL DEVELOPMENT

10.	Single dwelling or less than 10 dwelling units and/or a site of less than 0.5 ha	☐
11.	Householder application in the Green Belt	☐

COMMERCIAL, INDUSTRIAL AND RETAIL DEVELOPMENT

12.	Change of use of retail units on site less than 1 ha or with less than 1000 sq. m other than a change involving a loss of A1 uses	☐
13.	Refusal of change of use from retail class A1 to any other use	☐
14.	Change of use of industrial units on site less than 1 ha or with less than 1000sq.m. of floor space other than to a retail use.	☐

CERTIFICATE OF LAWFULNESS

15.	Certificate of Lawfulness (for proposed use or Development)	☐
16.	Certificate of Lawfulness (for existing use or Development)	☐
17.	Certificate of Appropriate Alternative Development	☐

CERTIFICATE OF LAWFULNESS

18.	ADVERTISMENT CONSENT (excluding Hoardings)	☐
19.	PRIOR APPROVAL APPLICATION	☐
20.	OUT-OF-BOROUGH OBSERVATIONS	☐
21.	CIRCULAR 18/84 APPLICATION	☐
22.	CORPSEWOOD COVENANT APPLICATION	☐
23.	APPROVAL OF DETAILS	☐
24.	ANCILLARY PLANNING AGREEMENT (S.106 or S.278) where the Heads of Terms have already received Committee approval	☐
25.	WORKS TO TREES	☐
26.	OTHER (please specify)	☐

The delegation powers schedule has been changed. Interim Director of Planning, Regeneration & Public Realm can determine this application

Case Officer:

Signature:

Date:

A delegated decision is appropriate and the recommendation, conditions/reasons for refusal and informative's are satisfactory.

Team Manager:

Signature:

Date:

The decision notice for this application can be issued.

Director / Member of Senior Management Team:

Signature:

Date:

NONE OF THE ABOVE DETAILS SHOULD BE USED IN THE PS2 RETURNS ODPM

Report of the Head of Development Management and Building Control

Address: 5 PRIMROSE GARDENS RUISLIP

Development: Sub-division of the existing semidetached house no.5 Primrose Gardens to provide a new flat no. 5A (Application for a Certificate of Lawful Development for an Existing Development)

LBH Ref Nos: 61380/APP/2023/3184

Drawing Nos: 5096-1

Date Plans received: 02-11-23 **Date(s) of Amendments(s):**

Date Application valid 02-11-23

1. RECOMMENDATIONS

1.1 Recommendations

That a certificate of lawful use or development be **REFUSED** for the existing development described above in respect of the land edged red on the attached plans for the following reasons:

The existing development does not constitute Lawful Development under Section 191 of Town and Country Planning Act 1990, Section 191 as amended by Section 10 of the Planning and Compensation Act 1991 as the Applicant has not demonstrated that, on the balance of probability, 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

2.0 APPRAISAL OF EVIDENCE SUBMITTED

The application seeks a certificate of lawful existing development for the sub-division of the existing semi-detached house no.5 Primrose Gardens to provide a new flat no. 5A .

In order for a Lawful Development Certificate to be granted under Section 191 of the Town and Country Planning Act 1990, the burden of providing relevant facts rests on the applicant, and the test of the evidence is the balance of probability. If there is no evidence to contradict or make the applicant's version of events less than probable and the applicant's evidence alone is sufficiently

precise and unambiguous, a Lawful Development Certificate should be granted.

The Council would need confirmation that the use claimed has been continually carried out without interruption for a continuous period of 4 years prior to the application.

The applicant has submitted the following as evidence in support of the application:

E-ON 2/622 - 30/6/22 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 21/3/22 - 16/4/22 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/3/23 - 2/4/23 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
Electricity Statement 28/8/21 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 4/7/22 - 2/8/22 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/7/23 - 2/8/23 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/11/22 - 2/12/22 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 27/2/21 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/1/23 - 2/2/23 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/12/22 - 2/1/23 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 20/7/20 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 26/7/20 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 1/7/22 - 3/7/22 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/6/23 - 2/7/23 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 17/4/22 - 2/6/22 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/5/23 - 2/6/23 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 14/3/21 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 25/3/21 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 28/11/21 - 1/3/22 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/2/23 - 2/3/23 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 2/3/22 - 20/3/22 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 29/5/21 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/4/23 - 2/5/23 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 27/11/21 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/10/22 - 2/11/22 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 30/10/20 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/8/22 - 2/9/22 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/8/23 - 2/9/23 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON 3/9/23 - 2/10/23 Mr Krish Lakshimpathy, 5A Primrose Gardens, Ruislip, HA4 6TY
E-ON Statement History 16/10/23 - 16/5/22
British Gas 18/5/19 British Gas - 5A Primrose Gardens -disconnection letter
British Gas 19/11/18 British Gas - 5A Primrose Gardens connection letter
Tonik Energy 17/5/19 Tonik Energy
Tonik Energy 10/7/20 Online payment to Tonik Energy - £105.19
Tonik Energy 7/5/20 Direct Debit Tonik Energy - £50.90
Tonik Energy 7/4/20 Payment to Tonik Energy - £50.90
Tonik Energy 9/3/20 Payment to Tonik Energy - £50.90
Tonik Energy 7/2/20 Payment to Tonik Energy - £50.90
Tonik Energy 7/1/20 Payment to Tonik Energy - £47.46
Tonik Energy 9/12/19 Payment to Tonik Energy - £47.46
Tonik Energy 7/11/19 Payment to Tonik Energy - £47.46
Tonik Energy 7/10/19 Payment to Tonik Energy - £47.46
Tonik Energy 9/9/19 Payment to Tonik Energy - £47.46
Tonik Energy 7/8/19 Payment to Tonik Energy - £47.46
Tonik Energy 8/7/19 Payment to Tonik Energy - £47.46

Tonik Energy 7/6/19 Payment to Tonik Energy - £47.46

Building Control Certificate 17/9/2019 Certification of building works to granny annexe as approved by the Planning Permission..

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 the date of this application (i.e2.11.19-02-11-.9.23).

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

The planning Unit

The planning unit for Flat 11 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.

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".

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.

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 house 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.

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.

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.
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.
- There is no evidence of Council tax payments and the Council holds no records
- There is no evidence of separate bin storage or collection
- The utility bills do not constitute sufficient evidence on their own to demonstrate separate occupation

CONCLUSION

Taking into consideration the evidence provided by the applicant and available to the Council at the time of this decision and the Council's own evidence, it is concluded that the applicant has failed to provide sufficient precise and unambiguous evidence to demonstrate that on the balance of probability, the units and 5 and 5A Primrose Gardens have been used as self contained dwellings and used continuously for a period of 4 years or more, prior to the date of this application.

The application is therefore recommended for refusal.

3.0 Relevant Planning History

61380/APP/2018/2364 5 PRIMROSE GARDENS RUISLIP

Single storey side extension involving demolition of existing garage

Decision Date: 08-08-2018 Approved

61380/APP/2018/1446 5 PRIMROSE GARDENS RUISLIP

Single storey side extension and demolition of existing garage (Application for a Certificate of

Lawful Development for a Proposed Development)

Decision Date: 05-06-2018 Refused

61380/APP/2005/3366 5 PRIMROSE GARDENS RUISLIP

ERECTION OF A SINGLE STOREY PART SIDE AND REAR EXTENSION

Decision Date: 26-01-2006 Approved

Contact Officer: Nicola Taplin **Telephone No:** 01895 250230