

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: 92 PORTERS WAY WEST DRAYTON

Development: The retention of an outbuilding as an independent unit of accommodation/flat
(Application for a Certificate of Lawful Development for a Existing Development)

Amended description

LBH Ref Nos: 69971/APP/2024/1050

Drawing Nos: TRICON/92PW/101
TRICON/92PW/103
Location Plan
TRICON/92PW/102

Date Plans received: 23-04-24 **Date(s) of Amendments(s):**

Date Application valid 23-04-24

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, 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

2.0 APPRAISAL OF EVIDENCE SUBMITTED

The application seeks a certificate of lawful use for the retention of an outbuilding as an independent unit of accommodation/flat.

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.

Submitted evidence:

- (i) The completed application form
- (ii) The completed application fee form
- (iii) Location Plan & Existing Plan
- (iv) Timber and Builder Merchant Material Invoices
- (v) Affidavits
- (vi) Supporting Photographs

The Council's Legal Officer has been consulted and has advised that there is insufficient factual and historical information to demonstrate that, on the balance of probabilities, the use applied for on the site has been continuous and uninterrupted for at least four years prior to the date of this application.

Officer Assessment:

The applicant alleges, the outbuilding has been in continuous use for over 4 years since November 2014. The application is dated 23.04.24, and the relevant 4-year period for consideration is from towards the end of April 2020.

The application which has been submitted is supported by very limited evidence. A planning statement has been submitted setting out when the outbuilding was constructed including aerial images showing the outbuilding in situ since June 2015. A builders merchants receipt is also provided which again appears to evidence the construction of the outbuilding but is not sufficient evidence to demonstrate its continuous use. Photos of the internal and external areas of the building have been provided within the statement also.

Turning to the Affidavit, this does appear to be ambiguous given that it is pre-typed with the neighbour completing only the space for the address, the date and then signature.

Whilst the applicant has provided some evidence in support of their application, there is insufficient evidence to demonstrate that the period of continuous four years of self contained use has been met. In addition, significant weight must be given to the contradictory evidence that has been provided in the Planning Contravention Notice to the Council, by the Freeholder.

A CLD was approved for the construction of the outbuilding in 2014 (69971/APP/2014/1581). The proposed plans indicated that the outbuilding was to be used as a Gym/Storage. The applicant now contends that the outbuilding was not constructed in accordance with its stated use on the drawings or in accordance with the GPDO regulations for which it was approved.

The evidence has been put forward to establish that an outbuilding was constructed, albeit not in accordance with the use which was contained within the submission to the LPA or which was approved. However there is a distinct lack of evidence to demonstrate its continuous use for over a 4 year period.

As such it is considered that insufficient precision and unambiguity has been shown to demonstrate, on the balance of probabilities, the claim that the outbuilding which was originally approved under planning application for planning application 69971/APP/2014/1581 has been continuously used as a self-contained residential unit for four years prior to the date of the application.

It is therefore recommended that this application be refused.

3.0 Relevant Planning History

69971/APP/2014/1581 92 PORTERS WAY WEST DRAYTON

Single storey detached outbuilding to rear for use as gym/ store (Application for a Certificate of Lawful Development for a Proposed Development)

Decision Date: 11-08-2014 Approved

5.0 Other including Measurements

Neighbouring Comment:

"The planning application was originally for a gym is what the resident told me if I had known it was going to be used as a residency I would have contested against this earlier. If this application is granted it will set a precedent for everyone else to build flats in their garden, creating in the surrounding area a small village at the bottom of our gardens, noise levels have and will increase and this is not acceptable"

Officer Comment:

Officers can only take into consideration the criteria set out under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), when determining this application. Therefore, this comment can not be considered within the scope of this determination

Contact Officer: Sadmin Kabashi **Telephone No:** 01895 250230