

Authorised Designs Ltd

Planners, Surveyors & Development Consultants



WRITTEN REPRESENTATIONS: GROUNDS OF APPEAL

APPELLANT: Mr M Purewal

SITE: 10 Greatfields Drive, Uxbridge, UB8 3QN

PROPOSAL: Lawful Development Certificate application for the existing use of the building as a 6 bedroom House in Multiple Occupation

LPA REFERENCE: 72815/APP/2017/1577

DATE: July 2017

1.0 INTRODUCTION

- 1.1 This statement has been prepared by Authorised Designs Ltd on behalf of Mr M Purewal and is submitted in support of the appeal lodged against the refusal of lawful development certificate application 72815/APP/2017/1577.
- 1.2 The application was submitted on 8th May 2017 and sought a lawful development certificate for the existing use of the building as a 6 bedroom House in Multiple Occupation. In summary the application sought to demonstrate that the building was already in use as a 6 bedroom HMO prior to the Council having imposed an Article 4 Direction in March 2013 which removed permitted development rights for changes of use to 3 – 6 person HMO's.
- 1.3 The Case Officer has incorrectly assessed the application on the basis that the Applicant should have provided evidence of 10 years continuous use. This is fundamentally an incorrect approach. The Council therefore incorrectly refused the appeal application on 22nd June 2017 for the following reason:
- 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 probability, the use has existed and been continuous for at least a period of ten years, prior to the date of this application.*
- 1.4 For the avoidance of any doubt, the application only sought to demonstrate that the building was being lawfully used as a 6 person HMO prior to the introduction of the Article 4 Direction. For clarification, prior to the introduction of the Article 4 Direction planning permission would not have been required to use a dwelling as a HMO for up to 6 persons. As such, the HMO use would not have been in breach of planning control and providing that it can be established that the HMO was in use prior to the introduction of the Article 4 Direction in March 2013, planning permission would not have been required to continue using the building as a HMO. At no point was the Appellant suggesting that the use was unauthorised or in breach of planning control and the application did not seek to

demonstrate that any such unauthorised use had occurred for a continuous period of 10 years. The Case Officer's report is wholly incorrect in stating that the Applicant must show that the building has been used as a 3 – 6 person HMO for a continuous and uninterrupted period of 10 years. It is quite clear that the granting of the existing lawful development certificate should hinge solely on whether the use was already occurring prior to March 2013 (when the Article 4 Direction was introduced). Moreover, it is bizarre that the Council raise a secondary query regarding how many residents reside at the building, suggesting that it is feasible that the 6 bedrooms could accommodate a total of 12 residents.

- 1.5 The Council's assessment is clearly flawed. The purpose of this statement is to provide additional clarification to support the information which was previously submitted. To recap, Section 191 of the Town and Country Planning Act 1990 provides the mechanism for any person to ascertain whether an existing use or development would be lawful, which is by the submission of an application. Section 191(2) states that the use will be lawful if no enforcement action could be taken in respect of the use and that the use or development does not constitute a contravention of any of the requirements of an Enforcement Notice then in force. Section 191 (4) provides that if the LPA is satisfied that the existing use or development is lawful, then a Certificate must be granted. The burden of proof rests with the applicant and the test is on the balance of probabilities. If the evidence is sufficiently clear and unambiguous then the certificate should be granted. The Applicant's own evidence need not be corroborated by independent evidence in order to be accepted and if the Local Planning Authority has no evidence of its own, or from others, to contradict the Applicant's version of events, it should not refuse a Certificate of Lawfulness providing the evidence is sufficiently precise. This statement will demonstrate that the evidence is clear and unambiguous.

2.0 THE EVIDENCE

- 2.1 To recap, the Council have no evidence that the building was not being used as a House in Multiple Occupation prior to March 2013 and no evidence that the building is being occupied by more than 6 persons.

- 2.2 Accompany this appeal statement at **Appendix A** is an email from Mr Sammy Chan, Hillingdon Council's Senior Housing Surveyor, which confirms that the property was in a HMO use before March 2013. On the basis that the Council's own housing department confirm that the property was in a HMO use before the March 2013, this can clearly not be disputed. Planning permission would not have been required for the HMO use before March 2013 and as the property was already in HMO use the Article 4 Direction would not have taken effect in this instance because any change of use to a HMO was carried out prior to March 2013. On this basis planning permission would not be required for the continued use of the HMO and the Council could not take any enforcement action on the basis that the HMO use was unauthorised.
- 2.3 Additionally, in response to the Council's spurious concern regarding the number of occupants, at **Appendix B** is a copy of the most recent housing licence which stipulates that the HMO use is for no more than 6 persons. This clearly prevents the HMO from being used by more than 6 persons.

3.0 SUMMARY

- 3.1 The information does clearly demonstrate that the building was being used prior to the introduction of the Article 4 Direction and that the building is being used as a House in Multiple Occupation for no more than 6 persons. This evidence cannot be disputed and the Council, despite carrying out an active investigation to demonstrate otherwise, have no evidence to dispute that this has not been the case. The Council therefore could not take any enforcement action against the use and the Council are incorrect in suggesting that the Appellant was required to demonstrate that the use had occurred for a continuous period of 10 years – this is simply not the test which is required in this instance. As such, on a balance of probability and taking into account all of the information that has been submitted, it is asserted that the Council should have granted a Certificate of Lawfulness in this instance. For the above reasons it is politely requested that this appeal is allowed and a certificate be granted.