

## Planning Statement

**Site:** 74a Park Way, Ruislip HA4 8NR

**Proposal:** Existing use of first, second and third floors as seven self-contained dwelling.

For the purposes of the 1990 Planning Act, uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Section 171B of the 1990 Planning Act, outlines the time limits that enforcement action can be taken against a breach of planning control. The relevant period for this change of use is four years.

In appeals to the Secretary of State which raise "legal issues" (for example, enforcement appeals on grounds (b) to (e) in section 174(2)), 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, a local planning authority (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 Gabbitas 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 local planning authority (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".

Where the breach of planning control comprises a material change of use, as is the position in this case, continuity of the use over a four-year period is required to attain immunity from enforcement action (and therefore lawfulness) – the 4 year period is applicable for changes of use that occurred before the law changed to the ten year immunity period.

In this case the applicant has submitted evidence which demonstrates on the "*balance of probability*" that the property has been continuously used as seven dwellings for a period exceeding four years.

### **Submitted Evidence**

- Existing floor plans and elevations
- Declaration of Edward O'Connor
- Assured Shorthold Tenancy (AST) agreements – 2019 to 2025
- Schedule of tenancies
- Bank statements demonstrating rental payments
- Electrical certs Oct 2019 - Flats 1-7
- Energy Performance certificates

### **Assessment**

The declaration of Edward O'Connor confirms he has managed the property since September 2019, and the property has been continuously used as seven flats since that date.

The schedule of tenancies has been produced by Edward O'Connor and timelines all tenancies for each flat from September 2019 when Edward O'Connor first started to manage the properties.

All the submitted evidence re-enforces the declaration of Edward O'Connor that the property has continuously been used as seven flats since at least September 2019.

### **Conclusion**

**The evidence provided demonstrates on the balance of probability that the property has been in continuous use as seven self-contained dwellings for a period exceeding four years, therefore, is the lawful use.**