

Section 191 Town and Country Planning Act

Certificate of Lawfulness - Proof of Evidence

Use of part of the building as 2 studio dwellings

254 Long Lane Hillingdon UB10 9PB

Site Information

Consultant	Jonathan McDermott
Client	Guv Panesar
Site Address	254 Long Lane, Hillingdon, UB10 9PB
LA	Hillingdon
Description of Development	Use of part of the building as 2 studio dwellings
Pathway (PD/Application/Appeal)	CLU - Existing development

Constraints Review

Flood Risk Zone	N/A
Contaminated Land	N/A
Tree Preservation Order	N/A
Heritage Assets	N/A
Noise Abatement Areas	N/A
Explosive Hazard Areas	N/A
Area of Outstanding Natural Beauty	N/A
Special Protection Area	N/A
Site of Special Scientific Interest	N/A
RAMSAR Convention Site	N/A
Site of Importance to Nature Conservation	N/A
Article 4(2) Directions	N/A

Planning History

Relevant History	None Relevant
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Report Date 27/09/2022

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1. Introduction

1.1. The site, the subject of this application, relates to Studio Flats A and B within No 254 Long Lane in Hillingdon. The building comprises two studio flats and a HMO, the latter of which is not subject to this application. The studio flats have been in consistent occupation since at least 2011.

1.2. No intervening lawful use has been established within the building since at least 2011 and as such the lawful use of the dwellings known as Studio Flats A and B has been established through the passage of 4 years as self contained dwellings.

Matters Pursuant to the Application

1.3. This Certificate of Lawfulness seeks recognition that Studio Flats A and B within No 254 Long Lane in Hillingdon are now immune from Enforcement Action under S171b of the Act and are now considered lawful under the provisions of S191 of the Act.

Summation of Case

1.5. Having regard to the leading authorities on the subject and other decisions taken across the country the applicants say that there is sufficient evidence to demonstrate that the studio flats have existed in an occupied state for at least 4 years and as such the use of this part of the building as two flats is lawful within the provisions of S191 of The Act.

2. Site Context

2.1. The Building at No254 Long Lane comprises a former semi-detached house located on the east side of the street and attached to No252 Long Lane.

2.2. The street comprises an eclectic mix of detached and semi-detached housing.

3. The Legal Framework

Section 171b Town and Country Planning Act 1990

171B Time limits.

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

[F5(2A)There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).]

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or

(b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.]

Section 191 Town and Country Planning Act 1990

191 Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this 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.

(3)For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a)the time for taking enforcement action in respect of the failure has then expired; and

(b)it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

[F3(3A)In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a)the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,

(b)an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c)a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.]

(4)If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5)A certificate under this section shall—

(a)specify the land to which it relates;

(b)describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c)give the reasons for determining the use, operations or other matter to be lawful; and

(d)specify the date of the application for the certificate.

(6)The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7)A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

(a)section 3(3) of the Caravan Sites and Control of Development Act 1960 [F4or section 7(1) of the Mobile Homes (Wales) Act 2013;]

(b)section 5(2) of the Control of Pollution Act 1974; and

(c)section 36(2)(a) of the M3Environmental Protection Act 1990.]

4. Proof of Evidence

4.1. The key test within this application is whether the dwellings known as Studio Flats A and B have persisted on the site for a period of no less than 4 years.

4.2. Studio Flats A and B occupy the ground floor of the existing building and are self contained studio dwellings with shower rooms and small kitchens. Both dwellings take access from the side elevation of the building and do not have access through the main body of the building.

4.3. As such the dwellings are dwellings fulfilling all of the key tests as set out within Gravesham Borough Council v Secretary of State for the Environment: QBD 1982.

4.4. The applicant presents the following evidence to support their assertion that the dwellings have existed on the site for more than 4 years.

- Valuation Office Agency Entries for Studio Flats A and B which demonstrate that they were first registered as dwellings on 18 April 2011
- Copy of Tenancy Agreement between Mr H Panasar and Mr R Stephanus for Studio Flat B dated 3 February 2016
- Council Tax bill from Hillingdon Council for the attention of the occupier at Studio Flat B dated 12 August 2016
- Letter from Ms S Wnek of SAB Estates confirming that Studio Flat A was let continuously from 2nd June 2014 and Studio Flat B was let continuously from 3rd February 2016.

4.5. Both of the properties in question remain let and are in continuous use.

4.6. As such there is sufficient evidence within the public record to demonstrate that the properties known as Studio Flats A and B at No254 Long Lane have persisted without intervention or enforcement action since at least 18 April 2011.

4.7. Further there is sufficient evidence that there has been no case of concealment in the case as the Council were both aware of the breach of planning control and have been charging Council tax to the properties since 18 April 2011.

5. Conclusion

5.1. This application is for a certificate of lawful existing use or development for the use of part of the building as Two Studio Flats within Class C3 of the GPDO.

5.2. The Studio Flats have been wholly used as Class C3 and as such the 4 year rule within S171b applies.

5.3. The proposed development is compliant with the requirements of S171b and S191 of the Act and as such it is respectfully requested that a CLU for the existing development be granted.