

PLANNING STATEMENT

APPLICANT: MR MALKIT PUREWAL

LOCATION: 10 GREATFIELDS DRIVE, UXBRIDGE, UB8 3QN

PROPSOAL: CERTIFICATE OF LAWFUL USE OR DEVELOPMENT:- USE OF DWELLING AS A HOUSE IN MULTIPLE OCCUPATION (APPLICATION FOR A CERTIFICATE OF LAWFUL DEVELOPMENT FOR AN EXISTING USE)

DATE: 21 JAN 2020

Prepared by:

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1. Introduction

This statement is prepared by OPS Chartered Surveyors on behalf of the applicant Mr M Purewal to seek a certificate of lawful (development /) existing use of the dwelling as a 6 no. bedroom House in Multiple Occupation.

The application property comprises of a three storey end terraced town house with part integral garage located on the North Eastern side of Greatfields Drive which lies within the Developed Area as identified within the Hillingdon Local Plan - Saved UDP Policies (November 2012).

The site is located within an area covered by an Article 4 Direction Order which has been in force since 23.03.2013.

The following documents are supplied with this statement to support the application:

- 1) HMO Licences issued by the London Borough of Hillingdon:
 - i) Licence No: LC/003545, dated 14.12.2009
 - ii) Licence No: LC/017591, dated 12.08.2015
 - iii) Licence dated 09.12.2016
- 2) Existing floor plans, drawings no: 10GLDC01-A
- 3) Email confirmation from Senior Housing Surveyor, Private Sector Housing (dated 16.11.2016)
- 4) Statutory Declaration from the following persons:
 - i) Mr David Youngs – ex-Private Sector Housing Manager
 - ii) Rajiv Khanna – Director of Diplex Letting and Management Limited
 - iii) Herdish Purewal – electrician of Electrician of West London Ltd
- 5) Tenancy agreements dated between 04.02.2013 to 10.08.2019
- 6) 7 & 9 Doghurst Avenue, Hayes LDC Appeal decision.
- 7) Housing Act 2004 Section 55(6)(b) extract.
- 8) HA2004 Briefing Paper dated 30.09.2019 by the House of Commons

2. Case for the application – HMO use started before Article 4 Direction Order

This section of the statement is to demonstrate the facts and supplied evidence relating to the use of the property as a C4 HMO will constitute Lawful Development under Section 191 of Town and Country Planning Act 1990, where:

- 1) The use of the property as C4 HMO has began before 23.03.2013
- 2) The property has been in continuous use as a C4 HMO for more than 10 years. This will be discussed in Section 3 below.

To support item 2.1 above, the applicant has supplied with application the following documents:-

- i) Email confirmation from the Senior Housing Surveyor relating to use of property as HMO before March 2013
- ii) HMO Licence Ref: LC/003545, dated 14.12.2009
- iii) Statutory declaration from Mr David Youngs, Mr Rajiv Khanna and Mr Herdish Purewal
- iv) A tenancy agreement between the Landlord James Austin and tenant Dipex Letting and Management Limited, as a 5 bedroom HMO house, dated 04.02.2013.

On 16/11/2016, the Senior Housing Surveyor confirmed that the property was in HMO use before March 2013 of which the Article 4 Direction Order came in force.

In addition to the above, a HMO licence (reference LC/003545) was granted on 14.12.2009 by the Council confirmed the use of property as a 5-bed 5-people HMO and compliance of the Part 1 of the Housing Act 2004 under the (HHSRS) Housing Health & Safety Rating System requirements as per s55 of the same Act. (An extract of s55 is enclosed for the LPA's reference).

The above HMO licence was an important evidence to the application of which it has officially confirmed the start date and use of the property as a HMO, when it was first licensed under the Council's HMO Additional Licensing Scheme in 2009.

A statutory declaration from Mr David Youngs, the ex-Private Sector Housing Manager has confirmed the followings:-

- a) The property was first inspected on 13.12.2006 as a HMO prior to the introduction of the Article 4 Direction Order,
- b) The property was first licensed on 14.12.2009 for a period of 5 years,
- c) The HMO licence was subsequently renewed on 12.08.2015 for another 5 years for 5-beds 5-people, and
- d) The HMO licence was renewed for the third time on 9.12.2016 for a further 5 years.

A second statutory declaration from Mr Rajiv Khanna has confirmed in his declaration that:-

- a) The property was inspected by himself as the director of Dipex Letting and Management Limited on 04.02.2013, and
- b) The property was in use as a 5-beds and 5-people HMO.

A third statutory declaration from Mr Herdish Purewal has confirmed in his declaration that:-

- a) He was employed to maintain the Fire Panel Alarm, Emergency Light & Electrics at the property in August 2012, and
- b) He inspected the property as a qualified electrician employed by the landlord of the property and confirmed that the property was in use as a 5-beds and 5-people HMO.

In addition to the above, a tenancy issued and signed on 04.02.2013 between the interested party Mr James Austin (the landlord) and Dipex Letting and Management Limited (the rent-to-rent tenant) confirming that the house was in use as a 5 beds and 5 people HMO since the start date.

The above evidence sufficiently demonstrate the use of the property as HMO has begun before Article 4 Direction Order was introduced.

Under the NPPF it states:

Article 4 directions cannot prevent development which has been commenced, or which has already been carried out.

Paragraph: 046 Reference ID: 13-046-20140306

Revision date: 06 03 2014

<https://www.gov.uk/guidance/when-is-permission-required#article4>

It is important to point out that one of the purposes of the Certificate of Lawful Development (for existing use or development) is to confirm whether an existing development is lawful or not by demonstrating the existing use/development has begun on/before a particular date and/or been in continuous use for a period of 10 years or more. In this instance, the evidences provided are to demonstrate the development had begun before the Article 4 Direction Order was introduced.

In this case, the applicant believes he has provided clear evidence to demonstrate that the development has begun before the introduction of the Order on 24.03.2013.

3. Case for the application – 10 years continuous use as HMO

As one of the criteria for the successful of obtaining a Certificate of Lawful Development (for existing use or development) is to demonstrate the property has been in continuous use for 10 years prior to the application.

At this point, the applicant wishes to point out the importance of the HMO licence and the requirement under s55(6)(b) of the Housing Act 2004 and Housing Act 2004 Briefing Paper dated 30.09.2019 by the House of Commons.

On page12 para. 5, line 4-7 of the Housing Act 2004 Briefing Paper (a copy is enclosed for the LPA's reference). It states that *"...all licensable HMOs have to have a Housing, Health and Safety Rating System inspection carried out within five years of a licence application being made..."*

The above is a statutory requirement under s55(6)(b) of the Housing Act 2004, where the HMO Licensing Authority is responsible for the HMO Licensing must inspect the licensed HMO property for health and safety purpose in every 5 (FIVE) years within the licensed period in order to fulfil its statutory duty

Since the granting of the first HMO licence on 14.12.2009, new licences were applied for and granted on 12.08.2015 and 09.12.2016 (which expires on 08.12.2021). Under s55 of the Housing Act 2004, the Local Housing Authority must have carried out at least 2 inspections on the property within the 10 years period of the two HMO licence renewals (from Dec 2009 to Dec 2019) so to confirm the health and safety status of the HMO, in other words, this will be an effective evidence within the council's own record to confirm the property is still in use as an HMO, unfortunately such inspection detail is not available to the applicant due to date protection reason.

It is reason to consider and expect the LPA has a statutory duty to obtain such detail from the Private Sector Housing Department to confirm the continuous use of the HMO for the past 10 years. Similar, the LPA has the legal power to enquire with the Council Tax Department to confirm student council tax exemptions in order to confirm the use as HMO where the applicant does not have such right under the Data Protection Act.

The applicant believes that a combination of the email from the PSH surveyor, HMO licences, statutory declarations and tenancy agreements are sufficient to demonstrate the property has been in continuous use as a HMO for at least 10 years since Dec 2009 to the application date.

In the very unlikely event, should the LPA have a different opinion on the 10 years continuous use facts and evidences, the following appeal decision may be useful to assist the LPA to determine the application of the CLD (existing use or development) under the first case of the application (Section 2) where the applicant has

demonstrated the use of the HMO was established before the Article 4 Direction Order.

The appeal cases: APP/R5510/X/19/3223282 & 3223283 were related to properties at 7&9 Doghurst Avenue UB3 5BJ where CLDs were applied for loft conversions at the two properties.

Two important factors affecting under the determination of the CLD applications were considered by the inspector:-

- A) Whether the developments have been substantially completed for 4 or more years,
- B) Whether the developments have complied with the conditions set under Schedule 2, Part 1, Class B and Class C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

In relation to factor A) above, the inspector accepted the fact that the appellant did not dispute that the operations in both appeals had been substantially completed less than 4 years for the application date. (page 2 para. 1 – Main Issue). Instead, the inspector relied on matters related to factor B) to conclude the appeal and made his decision.

The above has suggested that the 4 years rule alone does not give rise to the final decision as whether the existing developments would be lawful or not when they have not been existence for 4 year or not.

The same principle shall be applied to this application if the LPA have a different view on the 10 years rule for the existing use/development where LPA may consider the supporting evidence may not be sufficient to satisfy their assessment.

When considering the appeal applications, the inspector has concluded that the matters related to factor (B) would fully comply with the GPDO requirements and the existing developments would be lawful.

When applying factor (B) above to this application, factor (B) will be equivalent to the fact that the use of the C4 HMO which had begun before the Article 4 Direction Order was in force, with the supporting evidences provided above.

Making reference to the NPPF which has clearly stated that *“Article 4 directions cannot prevent development which has been commenced, or which has already been carried out.”* This is fact has confirmed that the operation of the dwellinghouse as an HMO would be lawful provided the use commenced before the Article 4 Directions.

4. Conclusions

The applicant in particular comprises an expansive body of evidence, which demonstrates beyond reasonable doubt and on the balance of probabilities, that the existing use/development of the property as HMO, is lawful and immune from formal enforcement action by reasons of its use as HMO in Dec 2009 and the passage of the required minimum time limit of 10 years from the date of the application. The appellant therefore respectfully submits to the LPA that this application should succeed.

5. Appendices:

1. HMO Licence 14.12.2009 – HMO Licence
2. HMO Licence 12.08.2015 – HMO Licence
3. HMO Licence 09.12.2016 – HMO Licence
4. LOCATION PLAN – Location Plan
5. PLANS-10GLDC01-A – Existing Floor Plans
6. EMAIL - PSH SURVEYOR – Email from Council Surveyor
7. Stat Decl - Mr David Youngs (Statutory Declaration)
8. Stat Decl - Mr Rajiv Khanna (Statutory Declaration)
9. Stat Decl - Mr Herdish Purewal (Statutory Declaration)
10. Tenancy agreement 04.02.2013 (Tenancy Agreement)
11. Tenancy agreement 07.10.2015 (Tenancy Agreement)
12. Tenancy agreement 17.12.2018 (Tenancy Agreement)
13. Tenancy agreement 13.04.2019 (Tenancy Agreement)
14. Tenancy agreement 12.06.2019 (Tenancy Agreement)
15. Tenancy agreement 01.07.2019 (Tenancy Agreement)
16. Tenancy agreement 10.08.2019 (Tenancy Agreement)
17. 7&9DoghurstAveDN (Appeal Decision)
18. HA2004 S55(6)(b) (Housing Act 2004 Extract)
19. HA2004 Briefing Paper