

Brighton and Hove City Council
Hove Town Hall
Norton Road
Hove
BN3 3BQ

24 February 2021

Dear Sirs

35 UPPER ROCK GARDENS, BRIGHTON, BN2 1QF

This letter is submitted in support of the application for a Certificate of Lawfulness for an Existing Use for the use of 35 Upper Rock Gardens as ten self contained flats.

The flats were created in the Autumn of 2015, with final sign-off under the Building Regulations made in March 2016. As each flat has therefore been in existence for at least 4 years, the flats are “legal” with regard to town and country planning legislation.

This letter provides further detail on the application, and should be read in conjunction with the supporting information that accompanies this application:

- Application forms
- CIL forms
- Drawing EXG.100 (Site Location Plan. Site Plan and Lower Ground and Ground Floor Plans
- Drawing EXG.101 (First Second and Third Floor Plans).
- Statutory Declaration from the applicant, Andrew Arrow
- Building Regulations Final Certificate and Covering letter for the works carried out
- Initial tenancy agreements for the 9 units that were let out on tenancy agreements (the 10th unit is occupied by the applicant/owner – Andrew Arrow).
- A summary sheet showing the letting history of the self contained units.



RTPI

mediation of space · making of place

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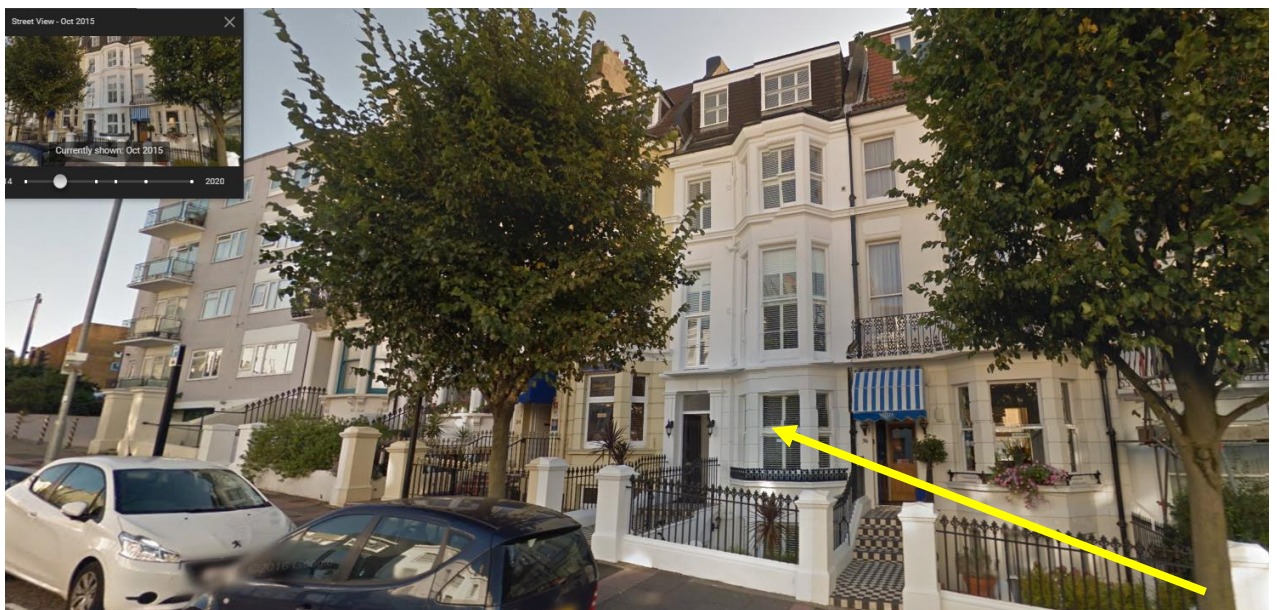
BACKGROUND

35 Upper Rock Gardens is a former guest house on the east side of Upper Rock Gardens. The guest house closed in the summer of 2015, and conversion works to create 10 self-contained flats were carried out in the Autumn of 2015.

Streetview May 2014 (note site still has awning stating Amblercliff guest house):



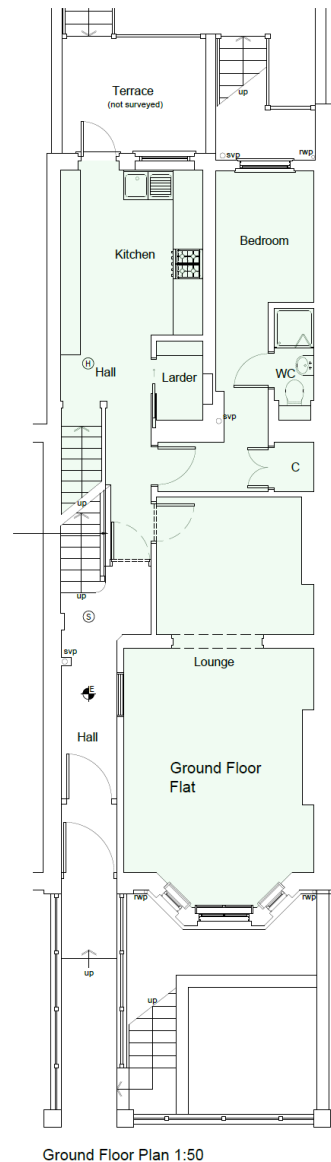
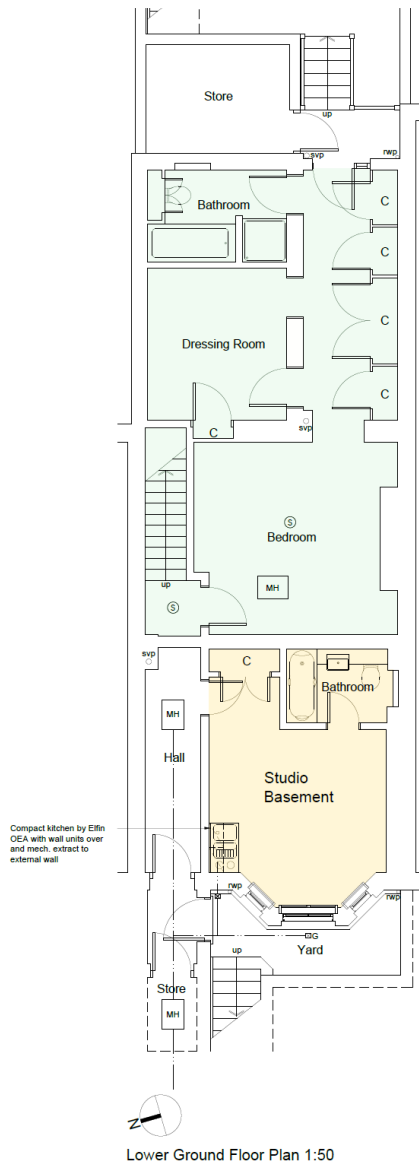
Streetview October 2015 (note renovation including removal of guest house awning):



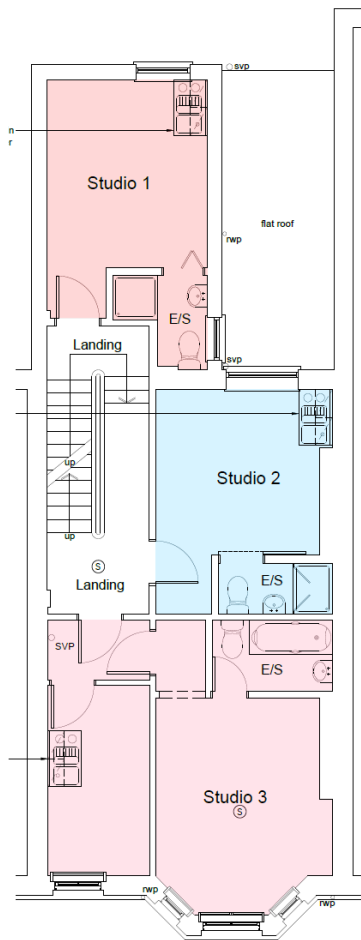
The works carried out created 10 self contained flats: the ground floor flat was first occupied (and is still occupied) by the applicant/owner – Andrew Arrow – on 30 October 2015. The remaining 9 units are retained by Mr Arrow and let out on Assured Shorthold Tenancy agreements, with first occupation of each of the flats occurring between November 2015 and February 2016.

Final building control sign-off for the conversion works was made on 03 March 2016. The floor plans for the flats are shown on ABIR drawings EXG.100 and EXG.101, with each flat shaded a different colour for ease of reference.

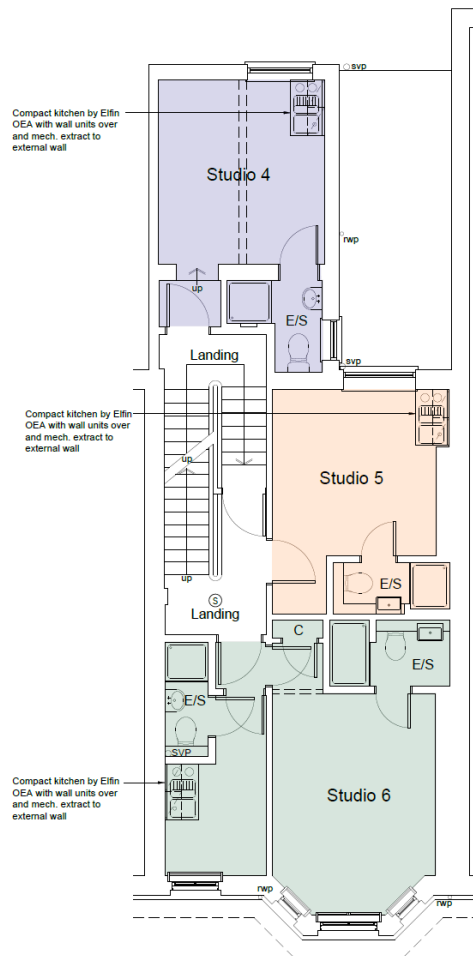
Ground and Lower Ground Floor Plans (ground floor/basement duplex unit, and basement level studio unit):



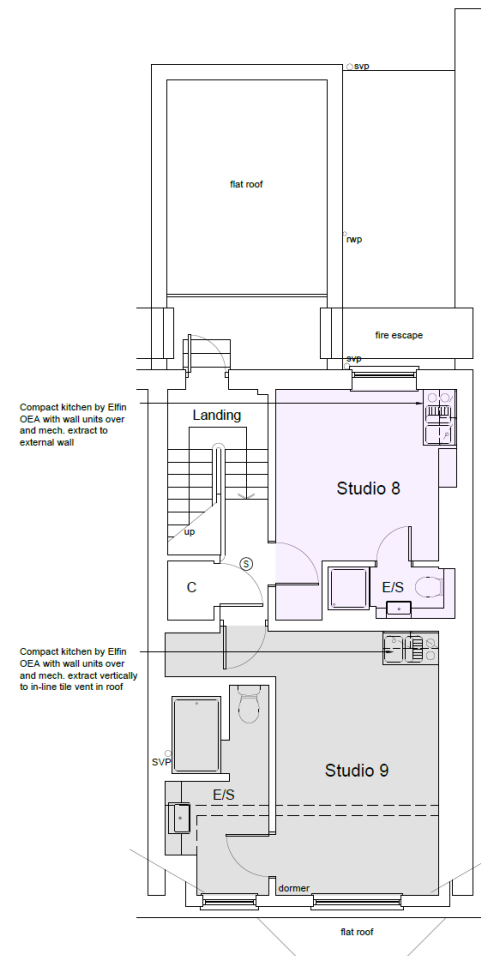
First, Second and Third Floor Plans



First Floor Plan 1:50



Second Floor Plan 1:50



Third Floor Plan 1:50

Please note that with regard to the numbering of the units, there is no unit 7.

The legal basis for the application is described overleaf, with a critique of the submitted evidence provided from page 7 onwards.

LEGAL BACKGROUND

A Certificate of Lawfulness for an Existing Use or Development should be granted if the time limits for taking enforcement action have expired (Section 191 of the Town and Country Planning Act [as amended by the Planning and Compensation Act]). The time limits are set out at Section 171B(2) of the Act. The Act states that time limits for enforcement action include a period of **4 years** for the use of a building as a separate dwelling house. Note that for town and country planning purposes, a building can be a whole building or part of a building.

Government Advice on the issuing of Certificates of Lawfulness used to be contained in Annex 8 Circular 10/97 – “Enforcing Planning Control: Legislative Provisions and Procedural Requirements”. The guidance has now been replaced by new National Planning Practice Guidance, from which the following policy references are relevant:

“Paragraph: 006 Reference ID: 17c-006-20140306

Who is responsible for providing sufficient information to support an application?

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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.”

“Paragraph: 008 Reference ID: 17c-008-20140306

Does a local planning authority need to consult on an application for a lawful development certificate?

There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if

there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application."

Paragraph 006 of the Guidance (see above) states that a Certificate should be granted unless contrary evidence makes the applicant's assertions "less than probable". This is in line with historic court decisions, as referred to in paragraph 8.15 of the aforementioned circular 10/97:

"Moreover, the Court has held (see F W Gabbittas 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 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"."

Consequently it can be seen that, for each of the flats at 35 Upper Rock Gardens to be deemed lawful, there is a need to establish "on the balance of probability" that they were first created at least 4 years ago. A discussion of the evidence that demonstrates the legal use "on the balance of probability" is provided overleaf.

EVIDENCE IN SUPPORT OF THE APPLICATION

Andrew Arrow has owned the site since 2007. His **Statutory Declaration** sets out the following timeline:

Date	Activity	Commentary
2007 – 2015	Mr Arrow runs the site as a guest house	
September 2015	Works commence on converting the premises into self contained flats	This statement is confirmed “on the balance of probabilities” by the Statutory Declaration. This statement is confirmed “beyond reasonable doubt” by the Building Regulations Final Certificate which confirms the initial notice was served in September 2015.
October 2015	Works to complete the conversion works are finished	This statement is confirmed “on the balance of probabilities” by the Statutory Declaration.
October 2015	Mr Arrow occupies the first of the 10 units.	This statement is confirmed “on the balance of probabilities” by the Statutory Declaration.
November 2015 to February 2016	The other 9 self contained flats are first occupied by tenants.	This statement is confirmed “beyond reasonable doubt” by the tenancy agreements that are submitted with the application.
March 2016	Building control issue its Final Certificate for the internal works to the premises.	This statement confirms “beyond reasonable doubt” that the works were all completed by March 2016 at the very latest.

Mr Arrow's Statutory Declaration is supported by tenancy agreements for all 9 of the self contained flats that he lets out (he occupies the 10th unit – the Ground Floor and Basement

duplex unit). The building control sign-off also provides formal confirmation that the internal works were completed by March 2016 at the very latest.

The documentary evidence confirms that the use as a separate self contained flats started occurring between November 2015 and February 2016 – which is now 5 years ago.

CONCLUSIONS

The above evidence all confirms that the flats at 35 Upper Rock Gardens have all been occupied as separate dwellings for over 5 years. This is a commencement date that is significantly earlier than the “relevant date” for this application (which is 19 February 2017, if four years occupation is to be demonstrated). The applicant’s Statutory Declaration is corroborated by documentary evidence in the form of tenancy agreements and a building regulations certificate.

In the absence of any contrary evidence, there is nothing to make that the applicant’s assessment of events “less than probable”. Consequently, and in line with the judgement provided in *W Gabbitas v SSE and Newham LBC [1985] JPL 630*, the Certificate of Lawfulness for the ten self contained flats at 35 Upper Rock Gardens should be issued.

Yours faithfully

LCP

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