



MAPLE
— PLANNING &
DEVELOPMENT LTD

Planning Services
Sevenoaks District Council
Argyle Road
Sevenoaks
TN13 1HG

25/08/21

Ref: 162

Dear Sir/Madam

**APPLICATION FOR A CERTIFICATE OF LAWFUL DEVELOPMENT – EXISTING.
WILLYS AT HEATH, MAIN ROAD, CROCKHAM HILL, TN8 6RS.**

Maple Planning & Development Ltd has been commissioned by the applicant, to submit this application for a Lawful Development Certificate (LDC).

The application seeks confirmation of the lawfulness of an existing vehicular access at the above site.

As this is an application for a Lawful Development Certificate (LDC), it will be appreciated that the planning merits of the case are not relevant, and are not therefore an issue to consider.

The decision is based on the 'balance of probability' and rests on the evidence submitted, the facts of the case, and on relevant planning legislation, guidance and case law; and takes account of the facts presented both in support of the application and against.

No assessment has been made in relation to principle, location, design or compliance with current planning policies. As such no planning policies are being referred to within this planning statement.

This Planning Statement has been prepared to set out the decision making context and provide sufficient information to enable a proper, informed decision to be made by the local planning authority (LPA) and which in my opinion will enable them to issue the requested LDC.

Relevant Planning Legislation, Guidance and Case Law.

Section 191 of the Town and Country Planning Act 1990 (as amended) provides that anyone (not just a person with a legal interest in the land) can apply to the local planning authority (LPA) for a Lawful Development Certificate and to ascertain whether (1) (a) any existing use of buildings or other land is lawful or (b) any operations which have been carried out in, on, over or under land are lawful.

Any such issued Certificate is a statutory document certifying the lawfulness for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition.

Section 191 (4) states that "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".

Section 171A of the Town and Country Planning Act 1990 (as amended) explains the expressions used in connection with enforcement;

- (1) For the purposes of this Act
 - (a) carrying out development without the required planning permission; or
 - (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.
- (2) For the purposes of this Act
 - (a) the issue of an enforcement notice (defined in section 172); or
 - (b) the service of a breach of condition notice (defined in section 187A), constitutes taking enforcement action.
- (3) In this Part "planning permission" includes permission under Part III of the 1947 Act, of the 1962 Act or of the 1971 Act.

Section 171B of the Town and Country Planning Act 1990 (as amended) explains the time limits for action:

- (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.
- (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.

In submitting the signed application form, and this supporting statement, both the applicant and myself are aware of Section 194 of the 1990 Town and Country Planning Act (as amended) - namely that it is an offence to furnish false or misleading information or to withhold material information with intent to deceive when lodging application any for Certificate of Lawful Use.

National Planning Practice Guidance (NPPG)

National Planning Practice Guidance (NPPG) covers a wide range of issues, including giving explanation on the process of obtaining a lawful development certificate for existing or proposed use.

NPPG at Paragraph: 002 Reference ID: 17c-002-20140306 advises:

Anyone can apply to the local planning authority to obtain a decision on whether an existing use or development, or a proposed use or development, is lawful for planning purposes or not. If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

NPPG at Paragraph: 003 Reference ID: 17c-003-20140306 states:

The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

NPPG at Paragraph: 005 Reference ID: 17c-005-20140306 gives advice on what precise information must be submitted with an application for LDC.

NPPG at Paragraph: 006 Reference ID: 17c-006-20140306 makes it clear that 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.

Case Law.

As advised in the NPPG the onus of proof in an LDC application is firmly on the applicant. The applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted (FW Gabbitas v SSE and Newham LBC [1985] JPL 630). If the local planning authority has no evidence of its 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."

In submitting this application, it is in awareness of that, on the balance of probabilities, the vehicular access has been in situ on a permanent and continuous basis throughout the relevant period.

The existence of that access can clearly be seen on the attached extracts from the title deeds for the property. The photographs that also accompany the application show an access that has, unequivocally, been in situ for a great number of years.

This LDC application obviously seeks to establish that the continued use of that access is now lawful by virtue of Section 171 of the Town and Country Planning Act 1990 (as amended)

It is considered that this application is being put forward with the required evidence and within the context of relevant legislation and case law, so that the LPA can reasonably conclude that, on the balance of probability, the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate of lawful use.

Whilst the LPA, as advised within the NPPG, can reasonably canvass evidence if it so wishes before determining an application, it is highly unlikely that any such counter-evidence will be available. If however it is, then there is a requirement to share this with the applicant for comment. As highlighted under the Case Law heading, the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted (FW Gabbitas v SSE and Newham LBC [1985] JPL 630).

As also highlighted above, 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".

Given the foregoing, it is respectfully requested that a Certificate of Lawful Development be issued in due course. In the meantime, I hope that sufficient information has been

provided in order to allow this application to be registered, but should you require any additional information then please do not hesitate to contact me.

Yours faithfully,

Paul Webster MRTPI
DIRECTOR