

Supporting Statement for:
Application for a Certificate of Lawfulness

85 Thornleigh Road, Bishopston, Bristol, BS7 8PQ

Project Ref: D011 September 2023



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Prepared on behalf of
Mr Isaac Fiakkas

1 INTRODUCTION AND BACKGROUND

1.1 This Statement supports a '*Certificate of Lawful Existing Use and Development*' (CLEUD) application submitted on behalf of Mr Fiakkas, owner of the property. The application is made under s.191(1) of the Town & Country Planning Act 1990, as amended by s.10 of the Planning and Compensation Act 1991 in respect of a single storey extension built at the rear of no. 85 Thornleigh Road. The applicant is seeking the Local Planning Authority's confirmation that the as-built rear extension is lawful for the purposes of planning control.

85 Thornleigh Road

1.2 The property is located in the residential neighbourhood of Bishopston and is centred on National Grid Reference ST 59122 76247. The single dwelling sits towards the centre of the terrace on the northeast side of Thornleigh Road. It is typical of other housing within the terrace which at its rear is a two-storey projecting wing, beyond which is an enclosed rear garden.

1.3 The layout and configuration is mirrored by the adjoining property at no. 83 Thornleigh Road, albeit the adjoining property is set nominally lower than the application property.

1.4 Planning History

1.5 The LPA's online Planning Register lists a 2019 Householder Planning application (ref. 19/03911/H) that was submitted retrospectively for an extension that had been built at the rear of the property. The application was refused permission for two reasons relating to its scale and design.

1.6 A subsequent appeal to the Planning Inspectorate in 2020 (ref. APP/Z0116/D/19/3242263) did not concur with the LPAs reasoning and concluded that it was only the 'harmful effect on the living conditions of the occupiers of No 83 Thornleigh' that was of concern, even though these near neighbours were supportive of the development.

2 THE AS-BUILT REAR EXTENSION AND EVIDENCE

The Extension

- 2.1 In April 2019 the applicant appointed Scoffield Building Services Ltd to add a rear extension to his property. This work commenced in June 2019 and by early September the extension was water tight and substantially completed. It was then fitted out to provide a kitchen and dining space whereupon it was first occupied in the later half of September 2019.
- 2.2 The as-built extension spans the full width of the property and wraps around the side of the rear wing to infill the space to the boundary with no. 83. Internally, the open plan space (c. 40m²). The extension is single storey and has an asymmetric tiled pitched roof. The shorter section of roof runs parallel with the side elevation of the rear wing and drops to a parapet gutter at the boundary with no. 83.
- 2.3 A roof ridge springs from the north-east corner of the rear wing and sits below the sill height of the first floor windows. From the ridge, the wider section of the roof spans the width of the rear wing and drops to a parapet gutter at the boundary with no. 87 Thornleigh Road. Within the main pitched roof are roof lights

Supporting Evidence

- 2.4 Along with the planning drawings, the following is provided as factual evidence to demonstrate when the construction of the extension took place (operational development) took place, with the following provided:
1. Statutory Declaration – Mr Isaac Fiakkas
 2. Extension photos – phases of construction
 3. Invoice – John Presland Heating, dated 13/09/2019
 4. Wren Kitchen Delivery Email Confirmation, dated 23/09/2019
 5. Invoice – Gatehouse Windows, dated 30/09/2019
 6. Invoice - Semple Electrical Services Ltd, dated 10/10/2019
 7. Invoice - John Presland Ltd Heating, dated 30/10/2019
 8. Electrical Certificate, Semple Electrical Services Ltd, dated 10/10/2019

Statutory Declaration

- 2.5 A Statutory Declaration is provided by the applicant. This sets out the events in bringing forward the extension to its occupation.

Extension Photos

- 2.6 The submission provides a series of photos that show the extension under construction, being, fitted out and occupied. The dates are as follows:
- 17th July 2019 – The extension structure is complete.
 - 28th July 2019 – The single-ply membrane roof has been laid and the rooflights installed.

- 23rd September 2019 – Following the installation of the rear bi-folding doors on the 23rd, the photos show the extension water-tight. The 23rd was the day the kitchen units were delivered by Wren.
- 28th September 2019 – The kitchen is being fitted.
- 25th October 2019 – The kitchen is complete and the extension is fully occupied.

Contractors Invoices / Delivery Notes

- 2.7 A series of invoices and delivery notes are provided as evidence of the works that took place and/or the supply of key materials. The installed kitchen was supplied by Wren Kitchens and an email regarding its delivery note 23rd September is provided.

Electrical Certificate

- 2.8 A copy of the certificate following the electrics being checked, the survey being carried out on the 8th October 2019.

3 PLANNING CONSIDERATIONS

- 3.1 The ability of LPA to issue a Certificate of Lawfulness hinges on whether ‘*on the balance probability*’ the operational development has been substantially completed for a period in excess of 4 years. The submission provides an array of evidence in support of the applicant’s case that the extension has been substantially completed for in excess of 4 years from the date of the application.
- 3.2 The evidence is clear on the 23rd September 2019 the extension, having had its roof, windows and doors installed was water-tight and substantially completed, allowing, the final fit-out to take place in the latter half of the month.
- 3.3 The applicant’s Statutory Declaration provides matters of fact and the photographic evidence shows how the extension progressed to completion in October 2019. The assortment of invoices provides evidences of the range of trades involved at the key stages.
- 3.4 In considering the Declaration, it is noted that in the court judgement of *F W Gabbitas v SSE and Newham LBC* [1985] JPL 630 it was held that an applicant’s own evidence does not require corroboration by independent evidence. The Court also held that if the local planning authority has no evidence of their own, or third parties to contradict or otherwise dispute the applicant’s version of events rendering them less than probable, there is no good reason to refuse the application.
- 3.5 The National Planning Practice Guidance at paragraph 006, Reference ID: 17c-006-20140306 provides the following guidance on CLEUD applications:
- “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.”*
- 3.6 Certificates of Lawfulness for Existing Use or Development (CLEUDs) are provided for under Part VII of the Town & Country Planning Act 1990 (as amended) with section 191 relating to existing uses and developments.
- 3.7 On this basis of the evidence provided, for the purposes or planning control, the extension is regarded to be lawful and immune from enforcement action.

3.8 Under the provisions of section 191(1) any person wishing to ascertain whether development is lawful can make an application for a certificate of lawfulness. In this regard, paragraph 2 of s.191 states the following:

"No enforcement action may 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)."

3.9 The Town & Country Planning Act 1990 (as amended) states:

"171A 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.

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.

(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."

3.10 In respect of time limits, Section 171B of the 1990 Act states at paragraph a that:

"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".

3.11 In this case, it is the 'other operations' and the extension as operational development that is relevant.

Conclusion

3.12 With the above explanation, drawn information and evidence, it is apparent that as a matter of fact and degree, and 'on the balance of probability', the extension has been substantially completed for in period in excess of 4 years, prior to the date of the application.

3.13 Therefore, by virtue of Section 191 of the Town and Country Planning Act, 1990 (as amended by Section 10 of the Planning Compensation Act, 1991) the development for which the certificate is being sought is deemed to be 'lawful' and for the purposes of planning control, we believe a Certificate of Lawfulness should be issued by the Council as there is no evidence to the contrary.