

Title: **STATEMENT OF LAWFULNESS**

Application: Certificate of Lawfulness Application for Existing Use -
Use of dwelling as two self-contained residential flats.

Address: 9 Hunter Close, Borehamwood, Hertsmere, WD6 2SW

Applicant: Mr Ali Sen

Local Planning Authority: Hertsmere Borough Council



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CONTENTS

1. PLANNING HISTORY

2. THE SITE

3. THE PROPOSED DEVELOPMENT

4. LEGISLATIVE FRAMEWORK

4.1. The Town and Country Planning Act 1990 (as amended)

5. LAWFULNESS APPRAISAL

5.1. Evidence

5.2. Appraisal

6. CONCLUSION

1. PLANNING HISTORY

- 1.1 23/0181/CLE - The reconfiguration and retention of existing dwellings to provide 2 x flats (1 x flat at ground & first floor level & 1 x flat at first floor level) Certificate of Lawful Development (Existing). Refused
- 1.2 16/1908/HSE - Conversion of garage to habitable room & single storey rear extension following removal of existing conservatory. Granted

2. THE SITE

- 2.1 The site is a two-storey terraced dwelling located on the western side of Hunter Close, in an established residential area of Borehamwood. The property is part of a wider terrace which is made up of ten houses of uniform architectural styles.

3. THE PROPOSED DEVELOPMENT

- 3.1 The application seeks a certificate of lawful development, made pursuant to S191 (4) of the Town & Country Planning Act 1990 ("The Act") which allows for a certificate to be issued by the Local Planning Authority to determine if an existing use or development would be lawful.
- 3.2 The application seeks to certify that the site, 9 Hunter Close, has been used as two self-contained residential flats for a continuous and uninterrupted period of 4 years and would therefore be lawful and immune from enforcement action.
- 3.3 An application was submitted to the Local Planning Authority (LPA) on 02 February 2023 under ref: 23/0181/CLE for *"the reconfiguration and retention of existing dwellings to provide 2 x flats (1 x flat at ground & first floor level & 1 x flat at first floor level)"*. The LPA refused to issue the certificate of lawfulness for the following reason:
- "Due to insufficient evidence, on the balance of probabilities, the Local Authority is not satisfied that the application building has been used as two separate residential units for a continuous period of 4 years or more".*
- 3.4 This application will seek to provide further evidence and clarity to show that the site has, on the balance of probabilities, been used as two self-contained residential flats for a continuous period of at least 4 years.

4. LEGISLATIVE FRAMEWORK

4.1 The Town and Country Planning Act 1990 (as amended)

4.1.1 Section 191 (1) of The Act states:

If any person wishes to ascertain whether-

- *Any existing use of buildings or other land is lawful;*
- *Any operations which have been carried out in, on, over or under land are lawful; or*
- *Any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,*

they may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

4.1.2 Section 191 (4) of The Act says:

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.

4.1.3 Section 171B of the Town and Country Planning Act 1990 (as amended) confirms that:

'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'.

4.1.4 The onus is on the applicant to demonstrate with precise and unambiguous evidence that, on the balance of probabilities (i.e. that it is more likely than not), the site has been used as submitted for the requisite 4-year period.

4.1.5 The Court has held (see *FW Gabbitas v SSE and Newham LBC* (1985) JPL 630) that the applicant's own evidence does not need to be corroborated by other 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.

5 LAWFULNESS APPRAISAL

5.1 Evidence

5.1.1 For your reference, the submitted evidence comprises the following elements:

Statutory Declaration from Mr Ali Sen

Photographs of the Site

Appendix 1 of Statutory Declaration – Site Location

Appendix 2 of Statutory Declaration – Layout

Appendix 3 of Statutory Declaration - Kitchen Invoice - 04-04-2017

Appendix 4 of Statutory Declaration - General works and downstairs kitchen upgrade 15-03-2017

Appendix 5a of Statutory Declaration - Tenancy Agreement Flat A 01-06-17 K Cirik

Appendix 5b of Statutory Declaration - Tenancy Agreement Flat A 01-04-18 P Krastev

Appendix 5c of Statutory Declaration - Tenancy Agreement Flat A 01-03-19 P Krastev

Appendix 5d of Statutory Declaration - Tenancy Agreement Flat A 06-03-20 T Soos

Appendix 5e of Statutory Declaration - Tenancy Agreement Flat B 15-07-17 K Michalock

Appendix 5f of Statutory Declaration - Tenancy Agreement Flat B 15-04-18 Silva-Pinto and Pinto De Sousa

Appendix 5g of Statutory Declaration - Tenancy Agreement Flat B 15-10-18 Silva-Pinto and Pinto De Silva

Appendix 5h of Statutory Declaration - Tenancy Agreement Flat B 01-04-2019 Mayi

Appendix 5i of Statutory Declaration - Tenancy Agreement Flat B 01-04-2021 Gilyen

Appendix 5j of Statutory Declaration - Tenancy Agreement Flat B 01-10-2021 Gilyen and Anka-Olga Oncio

Appendix 5k of Statutory Declaration - Tenancy Agreement Flat B 01-10-2022 Gilyen

Appendix 6 of Statutory Declaration - Bank Statement Latest Rent Payment Flat A T Soos

Appendix 7 of Statutory Declaration - Bank Statement Latest Rent Payment Flat B Anka-Olga Oncio

5.2 Appraisal

5.2.1 The Statutory Declaration from Mr Ali Sen describes the sequence of events experienced by the site's landlord, which speaks to the conversion of 9 Hunters Close into two self-contained residential flats. The declaration is signed by the solicitor and is consistent with the circumstances set out within this statement.

5.2.2 As stated within the Statutory Declaration, the site was internally altered to form two self-contained residential units, which is evidenced by the supporting photographs document submitted separately. These photographs show the entrance doors to each flat, with the

differentiated 'A' and 'B' in accordance with the tenancy agreements, as well as a photograph of the kitchens that serve each flat. Single dwelling houses do not have separate entrance doors and do not tend to have two separate kitchens, which for the purposes of this application evidences that the site has been converted from a single dwelling into two self-contained residential flats.

5.2.3 The submitted invoices/receipts, as shown in Appendix 3 and 4 of the Statutory Declaration, identify construction/maintenance works that have been carried out at the application site. Appendix 3 details work completed for the small kitchen in the 'upstairs flat'. Appendix 4 details work that was completed in the downstairs kitchen and the conservatory, which is clearly on the ground floor. Therefore, for the purposes of this application, the invoices evidence that the site has been converted from a single dwelling into two self-contained residential flats.

5.2.4 Moreover, as part of the construction works undertaken at this site, the works facilitated the installation of separate consumer unit meters for each flat, in order to calculate and split utility bills. Photographic evidence of these separate units is shown in the supporting photographs document, again evidencing that the site has been converted from a single dwelling into two self-contained residential flats.

5.2.5 The submitted tenancy agreements (Appendix 5 of the Statutory Declaration) comprise 12 documents which can be summarised in the following way:

Flat A – Kenan Cirk from 01 June 2017 to 31 May 2018

Plamen Kastev from 01 April 2018 to 30 Sept 2018

Plamen Kastev from 01 March 2019 to 28 Feb 2020

Tiban Soos 06 March 2020 to 05 Sept 2020 (continued occupation of Flat A outside of formal tenancy agreement until the present day, evidenced by Appendix 6 of the Statutory Declaration which provides the latest bank statement showing rental payment, under the above name)

Flat B - Karolina Michalock from 15 July 2017 to 14 July 2018

Maria and Silvia from 15 April 2018 to 14 Oct 2018

Maria and Silvia from 15 Oct 2018 to 14 April 2019

A Mayi 01 April 2019 to 1 March 2021

I-C Gilyen 01 April 2021 to 30 Sept 2021

Gilyen and Anka 01 Oct 2021 to 30 Sept 2022

Gilyen 01 Sept 2022 to 31 Aug 2023

Gilyen and Anka have continued occupation since the end of August 2023 on a rolling basis. Appendix 7 of the Statutory Declaration shows a bank statement with rental payment in the name of Anka-Olga Oncio.

- 5.2.6 The previous application at this site, refused under ref: 23/0181/CLE was submitted with incomplete tenancy agreements, as they did not include page 8 of such agreements. These pages clearly state the flat name (Flat A or Flat B) and show a continuous and uninterrupted period of occupancy for each flat from the 1st June 2017 for Flat A and the 15th July 2017 for Flat B. It is therefore evidenced that the site has been converted from a single dwelling into two self-contained residential flats for a continuous period of at least 4 years.

6. CONCLUSION

- 6.1.1 A Certificate of Lawfulness of Existing Use or Development is sought on the basis that the site, 9 Hunters Close, has been subdivided into two self-contained residential flats for a continuous period in excess of 4 years. In accordance with Section 171B of the Town and Country Planning Act 1990 (as amended), the submitted evidence has demonstrated that, on the balance of probabilities, the site has been used as submitted for the requisite 4-year period and is therefore lawful.
- 6.1.2 The requirements of Section 191 (4) of The Act have therefore been met and a certificate should be issued.