

Upp

PLANNING STATEMENT

**Certificate of Lawfulness for Existing Use Concerning the
Outbuilding**

5 Sunningfields Road, London, NW4 4QR



1. Introduction

- 1.1 UPP Architects + Town Planners have been instructed by the applicant to prepare and submit an application for a Certificate of Lawfulness for Existing Use or Development (CLEUD) to the Local Planning Authority of the London Borough of Barnet in respect of the outbuilding located in the rear garden of the property at 5 Sunningfields Road, London, NW4 4QR ('The Property').
- 1.2 This application is made on the basis that the outbuilding in the rear garden has been in existence on a continuous and uninterrupted basis for a period in excess of 4 years. The use is immune from enforcement action at that time.
- 1.3 It is noted that whilst the Levelling Up Bill Adopted in October 2023 changes the time period to 10 years, new legislation is required to enable this to come into effect and it has not been actualised yet.

2. Legal Background

- 2.1 Section 171A (1) of the Town and Country Planning Act 1990 states that: "For the purposes of this Act –
 - (a) carrying out development without the required planning permission; or
 - (b) failing to comply with a condition or limitation subject to which planning permission has been granted;constitutes a breach of planning control".
- 2.2 Section 171B (1) states 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."
- 2.3 Section 171B (2) states 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”.

- 2.4 Section 171B (3) states that: “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”.
- 2.5 Under section 191 of the Town and Country Planning Act 1990 a person may make an application to the local planning authority for a certificate of lawfulness of existing use, which shall be granted provided information is provided to the local planning authority satisfying them of the lawfulness of the use at the time of the application. A use is considered to be lawful if no enforcement action may be taken against it.
- 2.6 Therefore, if it can be shown on the balance of probabilities that the building in question has been used for a four-year period, the local planning authority must grant a certificate of lawful existing use in respect of that unit.

Balance of Probability Test

- 2.7 In *Re H and others (Minors)* [1996] AC 563, it was held that "the balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not" (emphasis added). Expressed in percentage terms, if a judge concludes that it is 51% likely that the claimant's case is right, then the claimant must be successful.

3. Analysis

- 3.1 5 Sunningfields Road, London, NW4 4QR (the "Property") is registered under land registry title number MX383084.
- 3.2 The property comprises a two storey semi-detached building which is used as a synagogue and associated ancillary uses. The property benefits from an outbuilding in the rear garden.
- 3.3 The original lawful use of the property is as a synagogue and Nursery. The nursery office is located on the ground floor and the nursery rooms are used on the first floor and in the Outbuilding. The nursery has been operating since 2018 on the site. At the time of its use it would have fallen within the D1 Use Class (which was the same use as the synagogue) and there were no historic conditions on this property restricting the use of the building to specified uses within the D1 Use Class. As such, the use of the property does not form part of this CLEUD application.
- 3.4 This application is made on the basis that the outbuilding has been in existence at in this property on a continuous and uninterrupted basis for a period in excess of 4 years.
- 3.5 The following evidence is submitted in support of the application as appendices to this planning statement:
- Initial invoices from Inflate for the initial lease of the outbuilding for a period of at least 10 months dated September 2018
 - Invoice from Inflate for the long-term hire dated November 2018
 - Brochure of Inflate Rental Price List dated 2018
 - Email from Nick Crosbie of Inflate confirming they will install in 2018
 - Email dated 21/08/2023 confirming rental rate card for the Inflate and AirClad structures
 - Evidence of rental payments to Inflate between December 2018 and October 2022
 - Photographic evidence of the outbuilding in existence between 2018 and 2023
- 3.6 The classification of a building is a matter of fact and degree and is not dependent on the



materials or size of the unit. The structure is a permanent structure which could not easily be dismantled or removed.

- 3.7 In order for the Local Planning Authority to issue a Certificate of Lawfulness for the existence of the building, the onus is on the applicant to submit evidence that is sufficient to demonstrate on the balance of probability.

4. Conclusion

- 4.1 In light of the evidence provided in support of this application it has been demonstrated, on the balance of probability that the outbuilding at 5 Sunningfields Road has been in existence on a continuous and uninterrupted basis for a period in excess of 4 years.
- 4.2 It is therefore considered that in accordance with Section 171B (1) of the Town and Country Planning Act 1990, the outbuilding is immune from enforcement action and that a Lawful Development Certificate should be granted in this instance.