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HEAL
PLANNING APPEALS

**PLANNING STATEMENT TO ACCOMPANY AN APPLICATION FOR A
CERTIFICATE OF LAWFUL DEVELOPMENT**

SITE: 6 Frederick Street West, Plymouth, PL1 5JW

APPLICANT: Mrs. Brenda Gillian Sumners

APPLICATION DESCRIPTION: Certificate of Lawful Development in respect of the retention of an existing roof room and roof terrace having been in situ for more than 4 years.

LOCAL AUTHORITY: Plymouth City Council

Application Description:

This statement has been prepared on behalf of the Applicant to accompany an application for a Certificate of Lawful Development in respect of the retention of a roof room and roof terrace at 6 Frederick Street West, Plymouth, PL1 5JW ("the Roof room and Roof terrace") and the application is submitted in accordance with section 191 of the Town and Country Planning Act 1990, as amended.

The purpose of this application statement is to demonstrate that based on the irrefutable evidence presented, and in accordance with the applicable legislation in force, the roof room and roof terrace has been in situ since 2004 (some 19 years), which is clearly more than the four years required by law for operational development.

In order to satisfy a Local Planning Authority that a Certificate should be granted, the Courts have held that the relevant test of the evidence submitted by an applicant should be the civil law test of the balance of probability. An assessment of this application will show that the strength of the applicant's evidence presented with this statement is compelling and certainly more than satisfies the civil law test based on balance of probability. We will demonstrate throughout this statement that this test is unequivocally met when considering the evidence in the Applicant's favour and we remind you that when assessing this application, you must do so based on the evidence alone, rather than considering planning merits or policy in force.

We respectfully request that a lawful development certificate is issued to regularise the siting and use of the roof room and roof terrace as part of the property known as 82a Uplands Road, London as this application establishes that the proposal is lawful under the definition of the Act.

The Legislation and Burden of Proof

The applicant is seeking a Lawful Development Certificate under Section 191 of The Town and Country Planning Act 1990 in respect of the siting of a roof room and terrace for a continuous period well in excess of four years (19 in fact).

Section 191(1)(a) of The Town and Country Planning Act 1990 states that if any person wishes to ascertain whether any existing building or land use is lawful, they may make an application to the Local Planning Authority specifying the development and describing the use. This application is made in accordance with this section of the legislation.

Section 191(2) of The Town and Country Planning Act 1990 stipulates that for the purpose of the Act, a structure is lawful if the time for taking enforcement action has expired and they do not contravene any of the requirements of an enforcement notice in force. Applying this section of the legislation to the facts of this application, we can clearly demonstrate in the evidence presented that the siting of the roof room and roof terrace has been continuous for over four years, and therefore, the time for taking enforcement action has expired and, as no enforcement notice has been issued to date, a certificate of lawful development/use can be issued.

Section 191(4) of The Town and Country Planning Act 1990 sets out that if, on an application the Local Planning Authority is presented with information satisfying them of the lawfulness at the time of the application of the use, they shall issue a Lawful Development Certificate. Based on the weight of the evidence presented within this application, we are confident the Local Planning Authority will be satisfied that the roof room and roof terrace is lawful and a Certificate will be granted.

Guidance states that *"where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, an LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see F W Gabbitts 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".*

Upon assessment of the evidence presented in this statement, it will become clear that the Applicant has overwhelmingly exceeded the burden of proof as it is clear the roof room and roof terrace has been used in situ for a period in excess of 19 years and for the purposes of the Act continuously for the past four years.

Background and Site Description:

The Property is an end of terrace/corner property. Vehicular access being at the rear with access to a garage. The earliest entry on the Land Registry Register dates back to 1919.

Below is an aerial shot of the property taken from Google Earth which shows the property looking from the front of Frederick Street West. The roof room on the rear elevation to the right of the property and the roof terrace which sits behind the structure are outlined in red.

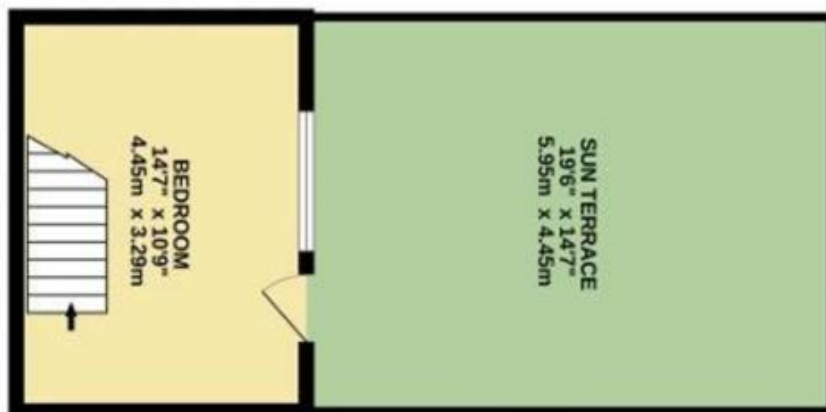


Figure 1 Aerial Shot of the Site

The Applicant purchased the property on the 11th October 2004 which can be evidenced in the Land Registry Register included with this application.

The roof room and roof terrace were in situ when the Applicant purchased the property in 2004. A sales brochure at the time referred to the roof room as a drying room. Following completion of her purchase the Applicant insulated the roof room and added plaster boards. It was then decorated and carpeted and used as a bedroom. Access to the roof terrace is via a door located in the Roof room as shown on the plan on the following page.

The only maintenance works carried out have been to re-roof the terrace and roof room in 2014.



No structural works have been carried out to the roof room or roof terrace by the Applicant during her ownership of the Property. Both the roof room and roof terrace were in situ and in use when she purchased in 2004 and have been continued to be used by the Applicant during her ownership of the property.

Photograph of the roof room used as a bedroom is shown below:



Photograph of the Roof terrace taken from the Roof room is shown below:



Below is a Google earth image from 2005. It can be seen on this image that the roof room and roof terrace are already in situ:



Below is a further Google earth image from **2007** again the Roof room and Roof terrace are clearly visible:



Below is a street view image from 2011 clearly showing the roof room and roof terrace in situ:



Evidence to verify this application

This section of the statement sets out the Applicant's evidence which verifies that the roof room and roof terrace has been in situ and in continuous use as part of the property for over four years. It is clear when assessing the extensive evidence and applying the civil law test of the balance of probability that the burden of proof which the Applicant has to meet in order to be granted a Lawful Development Certificate has been significantly exceeded.

1. Sworn Statutory Declaration

A sworn Statutory Declaration by the Applicant is presented with this application and is included in full in Appendix 1.

The Applicant's evidence is clear and concise and outlines the use of the Roof room and Roof terrace since 2004.

1. The Roof room and Roof terrace were already in situ and in use when the Applicant purchased the Property in 2004.
2. The roof room and roof terrace can clearly be seen in Google earth images from 2005 and Google Street View images from 2011.
3. The Applicant has not carried out any structural works to the roof room or roof terrace only improvements, maintenance and repairs during her ownership.
4. The continued use of the roof room and roof terrace by the Applicant has been for the last 19 years.

Also provided with the application are further statutory declarations by friends and family who have visited the property and can confirm the existence of the roof room and roof terrace for in excess of 4 years.

Conclusions:

The evidence presented with this application is clear, precise and unambiguous as detailed in the Statutory Declaration by the Applicant.

In order to grant a Certificate of Lawful Development, the Applicant must prove that the roof room and terrace has been in situ for over four years. The Statutory Declaration and supporting evidence presented with this application demonstrates that without any shadow of doubt this is the case. On that basis, the Applicant has exceeded the civil law test of the balance of probabilities.

An assessment of the overwhelming evidence presented can only come to one conclusion and that is that a Lawful Development Certificate should be issued and on that basis, we respectfully request that this application is approved accordingly.

Recommendation:

The Planning Authority is respectfully requested to approve this application and grant the certificate of lawful use.

HEAL Planning
11 St. Mary's Place

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Supporting documents to accompany this statement:

RE: 6 Frederick Street West Plymouth PL1 5JW

Appendix 1

1. Statutory Declaration of the Applicant – Brenda Sumners
2. Statutory Declaration of her daughter – Kara Hobbs
3. Statutory Declaration of her grandson – Connor Hobbs
4. Statutory Declaration of her grandson – Danny Hobbs
5. Statutory Declaration of her grandson – Lewis Hobbs
6. Statutory Declaration of her granddaughter – Natasha Gargett
7. Statutory Declaration of a friend – Sharon Long
8. Statutory Declaration of the daughter of the former owner of the property – Susan Penny

Appendix 2

9. Photos of the site
10. Dated Google Earth images

Appendix 3

11. Legal Title and filed plan.