

PLANNING JUSTIFICATION STATEMENT
23B CAMBRIDGE GROVE, HOVE



Whaleback Planning & Design 91 Boundary Road Hove BN3 7GA 01273 234 354 www.whaleback.co.uk	Site	23b Cambridge Grove, Hove, BN3 3ED
	Project	Lawful Development Certificate – Existing Use (s.191)
	Applicant	Paula Barnes and Paul Griffin
	Our Ref	W2275-a
	Date	January 2024
	Version	v1

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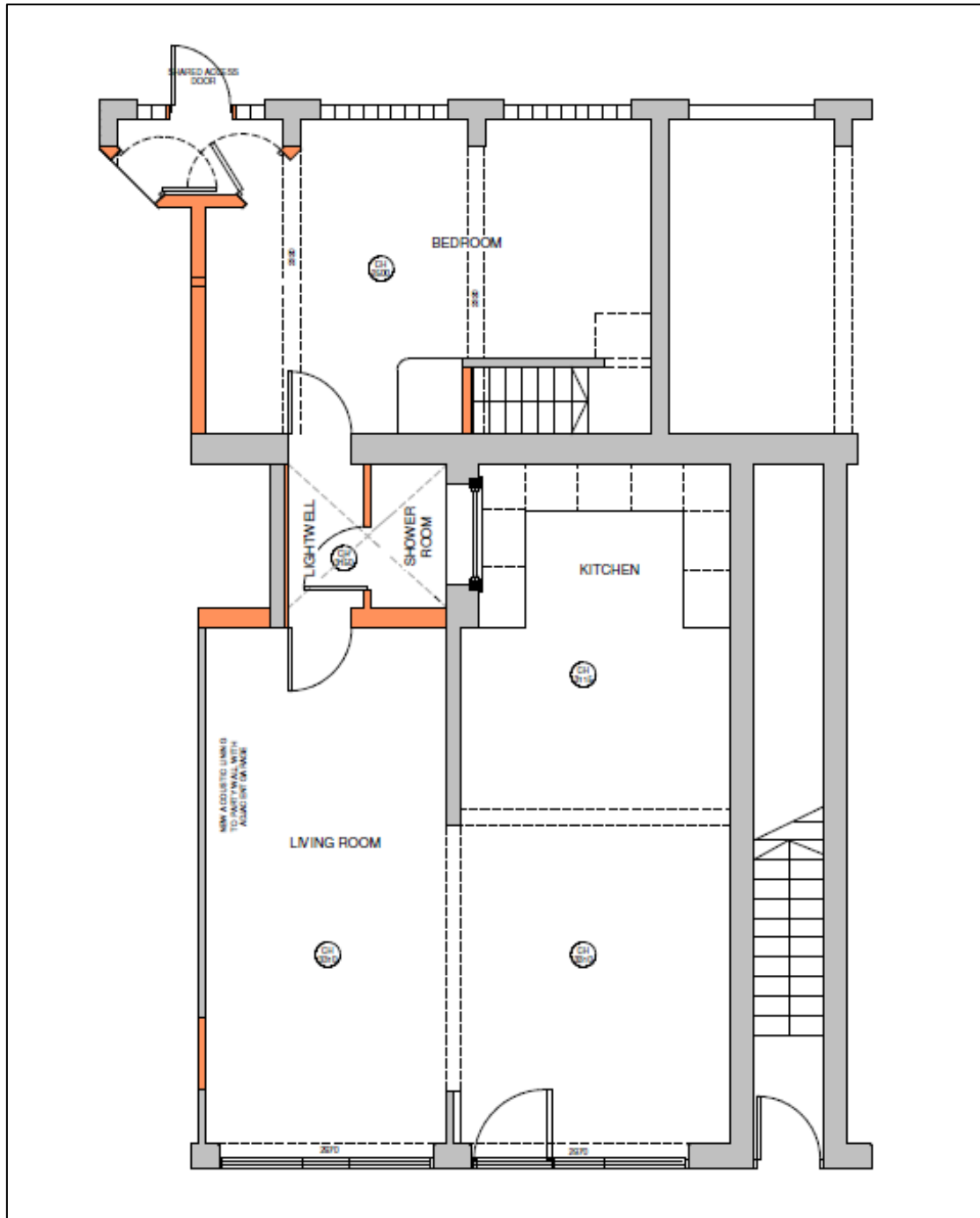
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Introduction

1. Whaleback Planning & Design is instructed by the applicant to prepare and submit a Lawful Development Certificate (LDC) application under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) (“the Act”) to ascertain that the existing use of the property at 23B Cambridge Grove, Hove as a single dwellinghouse (Use Class C3) is lawful through the passage of time, having been formed and occupied continuously for more than four years prior to the date of this application in accordance with section 171B(2) of the Act.
2. The LDC application is also made under section 191(1)(b) of the Act to establish the lawfulness of windows and a glazed door installed in association with the change of the use, having been completed more than four years prior to the date of this application.
3. This Planning Justification Statement describes the site and its surroundings, the planning history of the site and the relevant considerations and evidence demonstrating the lawful use of the site and the lawful status of the installed windows and door. The statement is accompanied by a number of appendices, which contain the submitted evidence.

Site and Surroundings

4. The site relates to a two-storey building to the south side of Cambridge Grove, with accommodation within the second floor roofspace. The building is a mews property, with ground floor carriage doors to the front elevation providing evidence of its former commercial use. Timber framed windows and a glazed door have been installed behind the retained carriage doors. The rear of the building (which consists of a first-floor vinery and ground floor level below) was identified as being curtilage listed in association with the Grade II Listed 23 Cromwell Road during the course of appealed application BH2016/02370.
5. The subject of this application is a self-contained planning unit, formed of part of the ground floor of the building and known as 23B Cambridge Grove.
6. The remainder of the building consists of 23 and 23A Cambridge Grove. Those dwellings were allowed on appeal following the refusal of planning application BH2016/02370 and as such do not form part of this LDC application. 23 Cambridge Grove is a terraced dwellinghouse, forming part of the ground floor, first floor and second floor of the building. 23A Cambridge Grove is a first-floor maisonette above the application property. Both properties have their own separate door accesses and are physically and functionally separate to, and independent of, 23B Cambridge Grove.
7. Access into 23B Cambridge Grove is achieved via a glazed door to the front elevation, as shown on the existing floor plans submitted with the application and in the extracted image below. There is a door to the rear of the unit that provides access into a lobby space (shared with 23 Cambridge Grove to the east) and onwards into an outside amenity space / rear garden.



Existing floor plans with access to the front shown

8. Internally, the dwelling at 23B comprises a bedroom to the rear of the premises and a bathroom and an open plan living room and kitchen to the front – all at ground floor level. There is a staircase to the rear of the dwelling, with the foot of the staircase having been blocked following its approval under applications BH2017/01685 and BH2017/01686.

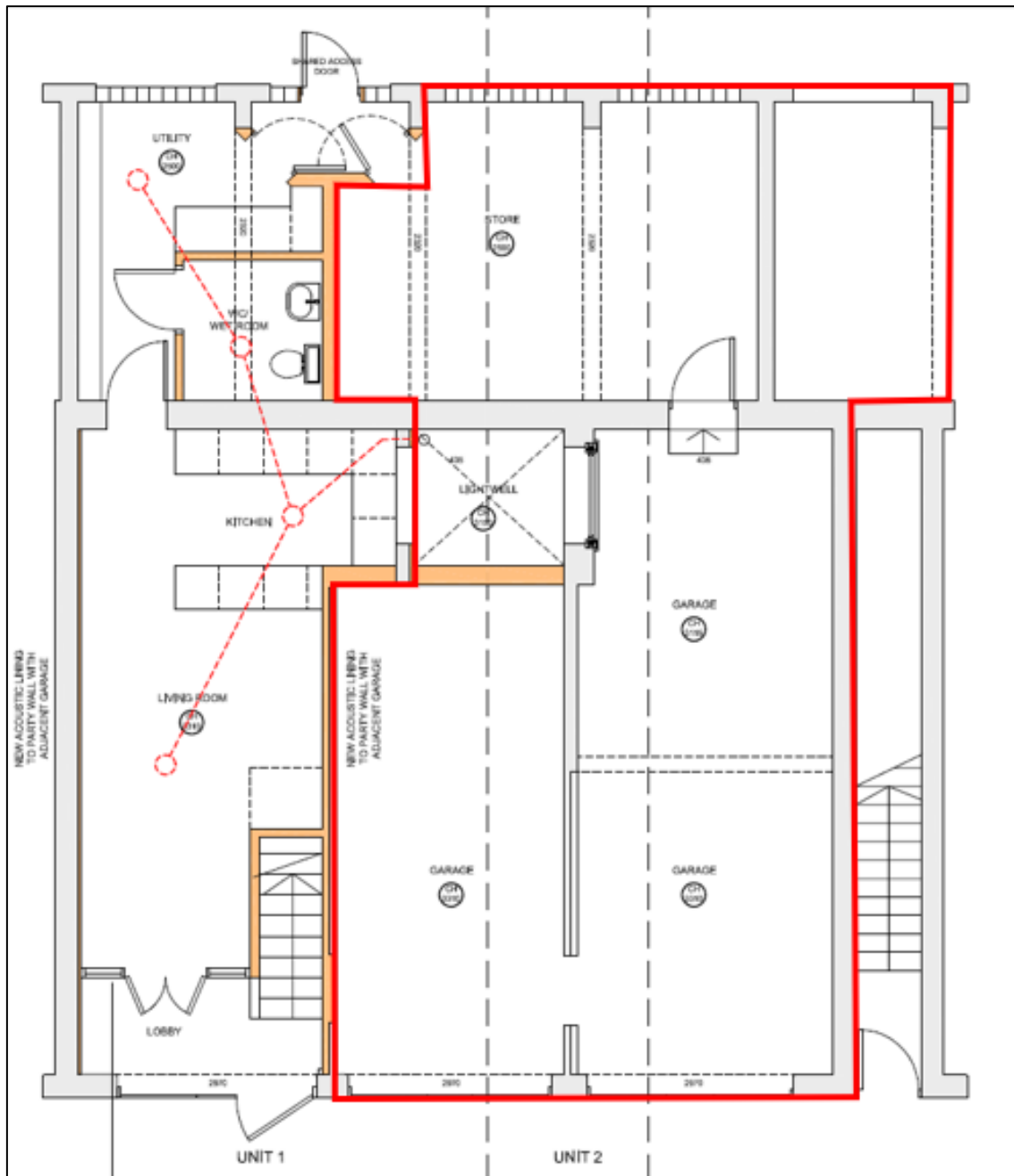


Blocked staircase to the rear of 23B Cambridge Grove

9. The application property has been occupied as a single dwellinghouse continuously for a period exceeding four years and no other planning uses have been undertaken within the planning unit during that period that would represent a different or mixed use. The glazed doors and windows to the front of the premises and behind the carriage doors have been in situ for over four years, having been installed in association with the dwellinghouse use.

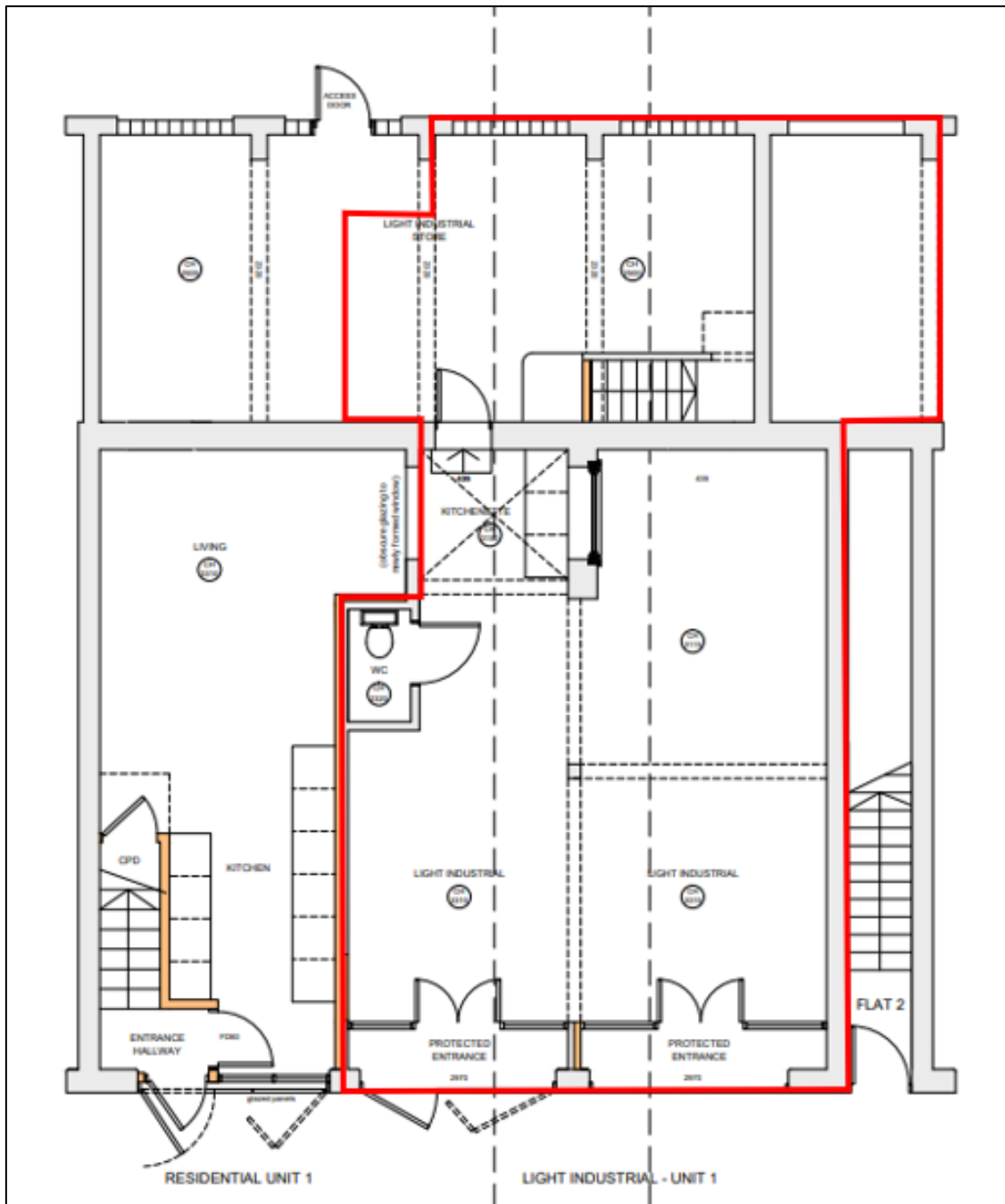
Relevant Planning History

10. There is an extensive planning history associated with 23 Cambridge Grove, before it was subdivided into three self-contained dwellings. The planning history considered most relevant to this LDC application is:
 - **BH2016/02370:** Conversion of 1no existing garage into 1no three bedroom maisonette at ground and first floor level with alterations to existing maisonette. (Part retrospective). Allowed on Appeal 23rd June 2017.
 - **BH2017/01685 & BH2017/01686:** Conversion of 1no garage into three bedroom residential unit with alterations to existing maisonette and formation of 2no commercial units (BI) at ground level, with associated alterations including replacement sliding sash window to front and creation of rear lightwell. Approved 17th August 2017.
 - **BH2017/02300:** Conversion of 1no garage into three bedroom residential unit incorporating internal alterations to existing maisonette, formation of 2no commercial units (BI) at ground level and associated external alterations including replacement sliding sash window to front and creation of rear lightwell. Approved 29th August 2017.
11. Application **BH2016/02370** was allowed at appeal in June 2017 and approved the formation of two self-contained dwellings; a terrace dwellinghouse spanning part of the ground, first and second floors and an altered first-floor maisonette. The permission subsequently led to the lawful creation of 23 Cambridge Grove and 23A Cambridge Grove as they exist today.
12. The permitted plans showed the remainder of the ground floor as being retained for a commercial garage use to the front part of the building and an associated commercial store to the rear. This space was subsequently converted into a self-contained dwellinghouse known as 23B Cambridge Grove – the subject of this LDC application. The glazed door and windows to the front of the premises were also installed in association with the change of use, without express planning permission.



Ground floor plans approved by appeal decision BH2016/02370, with retained commercial garage and store to the right hand side. Red line denotes the LDC application site; 23B Cambridge Grove

13. The allowed appeal scheme granted planning permission only and therefore application **BH2017/02300** was subsequently submitted (and approved) in order to secure listed building consent for the same internal layout that was granted planning permission at appeal.
14. Applications **BH2017/01685** and **BH2017/01686** were submitted before the planning appeal had been decided as an alternative proposal to the appeal scheme. The primary change was an enlarged commercial garage space at ground floor level. Planning permission and listed building consent were subsequently granted in August 2017, partly approving the blocking of the staircase to the rear of the building.



Ground floor plan approved by BH2017/01685 and BH2017/01686, with blocking of rear staircase shown. Red line denotes the LDC application site; 23B Cambridge Grove.

Legal Framework

15. Section 191(1) of the Town and Country Planning Act 1990 states that:

(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

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

16. The three options in section 191 form a disjunctive “or” list meaning any one of them can be applied for. This application relates to section 191(1)(a) and 191(1)(b), meaning the lawfulness of the existing use of buildings and land and of the operations carried out on the land is being sought.
17. Section 171B(1) and 171B(2) directs that operations and uses become lawful if the time period for enforcement action has expired. The time limits for enforcement action are set out in section 171B of the Act:

“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.”

18. The Planning Inspectorate’s ‘Certificate of lawful use or development appeals: procedural guide’ (August 2023) (“the Inspectorate Guidance”) (Annexe 2, para. 2.4) provides the following commentary concerning the time limits:

“section 171B(2) gives a 4 year time limit from the date of the breach of planning control for change of use from a building/part of a building to a single dwellinghouse. This time limit applies either where the change of use to a single dwellinghouse involves development without planning permission, or where it involves a failure to comply with a condition or limitation subject to which planning permission has been granted.”

19. This LDC application is firstly made on the grounds of section 191(1)(a) to ascertain the lawfulness of the existing use of 23B Cambridge Grove as a residential single dwellinghouse (Use Class C3), having been occupied for more than four years before the date of the application and thereby being immune from enforcement action as prescribed by section 171B(2) and as advised within the Inspectorate Guidance. The Inspectorate Guidance clarifies that the conversion of part of a building to a single dwellinghouse (as is the case with 23B Cambridge Grove) is also lawful, providing it adheres to the same four-year continuous period of occupation.
20. This LDC application is secondly made on the grounds of section 191(1)(b) to establish the lawfulness of the glazed door and windows as operational development installed in association with the change of use. This operational development was completed more than four years before the date of the application, thereby being immune from enforcement action as directed by section 171B(1).

21. The onus of proof is on the applicant for a lawful development certificate when establishing that the use of land has become ‘lawful’ through the passage of time.
22. The standard of proof is ‘on the balance of probability’ (a lesser requirement than ‘beyond a reasonable doubt’). The planning merits of the development are irrelevant to an application under section 191 of the Act. The consideration of the application rests entirely on the facts of the case.
23. The online Planning Practice Guidance: Lawful development certificates (PPG Paragraph: 006 Reference ID: 17c-006-20140306) confirms that the applicant’s evidence alone should be sufficient to justify the grant of a certificate “on the balance of probability”, so long as it is sufficiently precise and unambiguous. The applicant’s evidence does not have to be corroborated by ‘independent’ evidence. If the LPA has no evidence to contradict or otherwise make the applicant’s version of events less than probable there can be no grounds to refuse to grant a certificate.
24. The Inspectorate Guidance states that when refusing an application for an LDC, the local planning authority should consider carefully whether it has a sufficiently strong case for doing so, on the basis of the material before it (paragraph 2.1.3). It goes on to advise that it is best practice for the local planning authority to have constructive discussions with applicants for an LDC and, if it has any concerns, give the applicant the opportunity to amend the application before it is decided. This should help to avoid the need to appeal.

Consideration of Evidence

25. The application submission comprises the following evidence in respect of the existing dwellinghouse use and associated glazed door and windows, which should be read in conjunction with this statement:
 - Site Location Plan
 - Existing Floor Plans
 - **Appendix 1:** Conversion Works Photographs (August 2018)
 - **Appendix 2:** Family Photographs of 23B Cambridge Grove (February 2019 – January 2024)
 - **Appendix 3:** Signed Statutory Declaration from P Barnes and P Griffin
 - **Appendix 4:** Signed Statutory Declaration from E Mazza
 - **Appendix 5:** Signed Statutory Declaration from M Coombes
 - **Appendix 6:** Signed Statutory Declaration from A Law
 - **Appendix 7:** E-mail to the Valuation Office Agency (12th January 2024)

First Grounds for Application: Dwellinghouse Use

26. In order to determine whether there has been a material change of use, it is necessary to identify the appropriate planning unit. This is the conventional position which was agreed between the parties (accepted without demure by the Court) in *Church Commissioners v SoS for the Environment (1996)71 P & CR 73*.

27. Any given planning unit can have a single use (and in some circumstances, secondary ‘ancillary’ uses) or be in a mixed use. Planning units can change use through the granting of planning permission or through the passage of time in the case of unauthorised development (as is the case at 23B Cambridge Grove), which become lawful once the time limit for immunity from enforcement action passes.
28. As adjudicated in *Burdle v Sos for the Environment (1972) 1 WLR 1207*, the unit of occupation will often constitute the appropriate planning unit and outlines how separate uses can only be formed if they are physically and functionally separate from the rest of the land/building. The judgement from Bridge J stated:
- It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.*
29. The Inspectorate Guidance (Annexe 2, para. 2.81) also uses this general single occupancy rule when setting the criteria for a lawful dwellinghouse use, stating that (emphasis added):
- Where a single, self-contained set of premises comprises a unit of occupation, which can be regarded as a separate "planning unit" from any other part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse; and are used as a dwelling, whether permanently or temporarily, by a single person or more than one person living together as, or like, a single family, those premises can properly be regarded as being in use as a single dwellinghouse for the purposes of the [s171B(2)] of the Act.*
30. 23B Cambridge Grove is in a single unit of residential occupation, having been occupied by the applicants as a single household (and no other person or people) for a time period exceeding four years from the date of this application. There have been no other units of occupation within 23B Cambridge Grove which could otherwise split the application property across different planning units. This is robustly demonstrated in the submitted evidence, which is considered in more detail further below.
31. 23B Cambridge Grove in its entirety is therefore the appropriate planning unit and must be used as the starting point when assessing whether the unauthorised change of use has become lawful through the passage of time.
32. The relevant time period for establishing a lawful dwellinghouse use is four years, with this being the time limit for taking enforcement action as set out in s171(2)(B) of the Act. The submitted appendices support the applicant’s case that the use of 23B Cambridge Grove as a single dwellinghouse is lawful, having been continuously used as a self-contained dwellinghouse since 10th February 2019 and certainly in excess of four years.
33. The application premises is and has been physically separated from the rest of the building by virtue of the party wall between 23 and 23B Cambridge Grove and the blocked internal staircase to the rear of the property (shown at page 4 of this Statement), which has prohibited any access with the maisonette above (23A Cambridge Grove). Each property has its own separate access, with access into 23B Cambridge Grove achieved via a secure front door as illustrated on the submitted plans and as can be appreciated on site today.
34. Appendix I comprises building work photographs provided by the applicants, accompanied by meta-data contained within the image files to establish the date each photo was taken for authenticity. The

photographs show that the conversion of 23B Cambridge Grove into a dwelling was in progress to a significant extent by August 2018. The conversion works were completed in early February 2019, meaning that the physical separation of the premises from the rest of the building has been in place for more than four years.

35. Appendix 2 contains family photographs provided by the applicants. The photographs show the use of 23B Cambridge Grove as a dwellinghouse and are again accompanied by meta-data contained within the image files.
36. The collated photographs show that 23B Cambridge Grove has been in a continuous dwellinghouse use since 10th February 2019, this being the first day the applicants moved into the premises and started using it as a single, self-contained dwelling. A photograph dated 10th February 2019 is presented in Appendix 2 and shows the kitchen with domestic items laid out from the move into the property.
37. The remaining photographs contained within Appendix 2 clearly show that 23B Cambridge Grove has been continuously used by the applicants for residential purposes (such as eating, cooking, socialising and relaxing) since February 2019 and until the submission date of this LDC application.
38. There are few images of the rear bedroom in use and no photos of the bathroom, but this is to be expected for private areas of the dwelling. It stands to reason that the existing bedroom and bathroom would have been used as part the dwellinghouse since February 2019 and that the living / dining room and kitchen would not have been used in isolation. On the balance of probability, the application property has been functioning as a dwellinghouse, with an in-use bedroom and bathroom as shown on the submitted floor plans.
39. The number and regularity of the submitted family photographs present a compelling case that 23B Cambridge Grove has been in continuous use as a single dwellinghouse since February 2019.
40. Appendix 3 contains a sworn and witnessed statutory declaration from the applicants, who attest to their occupation of 23B Cambridge Grove as a single dwellinghouse with reference to the evidence submitted with this LDC application.
41. Appendices 4 to 6 contain sworn and witnessed statutory declarations from neighbouring occupiers along Cambridge Grove. In all cases, the authors witnessed the occupation of 23B Cambridge Grove as a residential home from February 2019 onwards.
42. The legal verification of the four statutory declarations affords this evidence with considerable weight in the determination of this LDC application.
43. Appendix 7 contains an e-mail from the co-applicant (Paula Barnes) to the Valuation Office Agency, requesting that 23B Cambridge Grove be registered for Council Tax purposes and that payments are backdated to February 2019.
44. In light of the Planning Practice Guidance tests, the absence of Council Tax records for the flat (that is currently being rectified and clarified retrospectively) does not constitute 'counter-evidence' for the purposes of this application as it does not contradict or make the applicants' version of events less than probable. It simply demonstrates that the administrative process relating to Council tax had not been resolved from February 2019 to date, which the applicants are now seeking to proactively resolve in the interests of transparency and in the knowledge that the premises have been used as a self-contained dwelling during this period.

Second Grounds for Application: Glazed Doors and Windows

45. As set out in the Act, unauthorised operational development becomes lawful and immune from enforcement action if it has been in situ for more than four years from the date that the operation was substantially complete.
46. Appendix 1 contains a photograph of the front glazing at 23B Cambridge Grove, showing that the windows and door were in situ on the 9th August 2018 whilst the internal dwellinghouse conversion works were still underway. The photograph shows that there were gaps present that were due to be filled, which show that the external works had not been entirely completed. It is nonetheless contended that the fenestration was substantially complete at this date given that the timber frames and glazing had already been installed.
47. Appendix 2 includes photographs of the completed glazing visible in the background of the majority of the images. The earliest date that the glazing is visible is in a photograph from the 20th February 2019 and the latest date being in the photo from the application submission date (22nd January 2024). Even if the earlier date of 9th August 2018 is disregarded as the operative date for the purposes of this LDC application (as it had not been entirely completed), it is clear that the glazing was in situ in February 2019 and has remained so until the present day.
48. Overall, the photographic evidence demonstrates, on the balance of probability, that the windows and glazed door have been in situ for a period that exceed four years prior to the submission of this application and is therefore lawful in planning terms.

Conclusion

49. Based on the evidence submitted with the application, mindful of the legal test of the Town & Country Planning Act 1990, the content of the Government's Planning Policy Guidance and relevant case law, the applicant has demonstrated that on the balance of probability, the residential unit at 23B Cambridge Grove has been used as a self-contained dwelling (C3) for a period of at least four years from the date of this application and is therefore 'lawful' through the passage of time.
50. Similarly, the existing window and glazed door to the front of the property has been in situ for a period exceeding four years from the date of this application and has therefore acquired lawful status in planning terms.
51. In the absence of any evidence held by the LPA, or provided by others, to contradict or call into question the probability of the applicant's version of events, the application should be approved and a Lawful Development Certificate issued.

Engagement with the Local Planning Authority

52. This Planning Justification Statement has been prepared to assist the Local Planning Authority in the determination of this LDC application. However, in the event that the Local Planning Authority should wish to discuss or query any element of the submission, the applicants would welcome a constructive discussion prior to the determination of the application, as per the recommendations set out in the NPPF and The Inspectorate Guidance Correspondence can be sent to Whaleback Ltd via the contact details set out below.

Whaleback Planning & Design

91 Boundary Road

Hove

BN3 7GA

01273 234354

info@whaleback.co.uk

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