



## Planning Statement

184 Fern Hill Road, Oxford, OX4 2JR

Certificate of Lawfulness for the operational work to facilitate  
the subdivision of 184 Fernhill Road

January 2024

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| <b>Project:</b> | <b>Certificate of Lawfulness for Existing Development</b> |                    |             |
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|  | <b>Issue Date:</b>  | Day   | 15 | 17 | 23 |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| <b>Document Title</b>  | <b>Document No.</b> | <b>Amendment</b>                                  |    |    |    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Draft Report   | Internal review     | X   | X  |    |    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|  | Client approval     |   |    |    |    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Final Report   |                     |   |    |    | X  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| <b>Distribution</b>  |                     | <b>No. of Prints (X = Issue Sheet) (E=E-mail)</b> |    |    |    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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| <b>Purpose of Issue</b>  |                     | A   | A  | A  |    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| <i>P=Planning Issue, I = Information, A = Approval, S = Scheme Design, T = Tender, C = Construction, Ar = Archive, FC = Final Construction</i> |                     |   |    |    |    |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

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| <b>Checked by:</b> | L Powlesland | <b>Approved by:</b> | Client |
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# 1 Introduction

- 1.1 This statement is produced to support an application for a Certificate of Lawful Development for the existing operational works and subdivision of the dwelling. 184 Fern Hill Road was lawfully extended in 1992, and then subdivided (along with other operational works) in 2015, a period in excess of 4 years.
- 1.2 This statement will introduce the meaning of 'development'; in accordance with the Town and Country Planning Act 1990, summarises the relevant legal tests and sets out the application in light of these.
- 1.3 Further to the meaning of 'development', this statement will set out how the development accords with section 171B(1) of the Town and country Planning Act 1990. The conclusion reached is that the development is lawful so no enforcement action can be taken.
- 1.4 In addition to this planning statement, the application is accompanied by the appropriate forms and ownership certificate, duly signed and completed, and the following documents prepared by Bluestone Planning:
  - 1:1250 Site Location Plan
- 1.5 The relevant application fee will be submitted by the applicant separately.

## 2 Site Location and Planning History

- 2.1 The proposal site lies within the Cowley district of Oxford and sits on the southern side of Fern Hill Road and the western side of the Eastern By-Pass, though no vehicular access is available onto the bypass from Fern Hill Road. It currently comprises a two-storey dwelling which formally comprised a two-storey side extension to No.184 Fern Hill Road, and is now subdivided where the extension meets the original dwelling.
- 2.2 The property to which this application relates is an end of terrace residential property with a two-storey side extension following permission in 1992, but subdivided with other operational works in 2015 as evidenced within this application. Further information on the operational works can be found in Appendix 05.
- 2.3 The relevant planning history that is available online is as follows:
- **92/00589/NF** – Two storey side extension and single storey rear extension –  
*Approved*
  - **93/00170/NF** – First Floor rear extension – *Approved*
  - **20/00244/CEU** - Application to certify that the existing use as a House in Multiple Occupation (Use Class C4) is lawful development – *Refused*
  - **21/01557/FUL** - Sub-division of the existing dwelling and two-storey side extension.  
Change of use from dwellinghouses (Use Class C3) to House in Multiple Occupation (Use Class C4) (Retrospective) – *Refused, Appeal Dismissed*
  - **22/01365/CEU** – Application to certify that the existing sub-division of dwelling into 1 x 5 bed and 1 x 3 bed dwellinghouses (Use Class C3) is lawful development. –  
*Refused*

### 3 Town and Country Planning Act 1990

- 3.1 Section 55(1) of the Town and Country Planning Act 1990 defines development as *‘the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land’*.
- 3.2 Section 171B of the Town and Country Planning act relates to the time frames in which enforcement action can be taken against breaches of planning control. Section 171B(1) relates to breaches of planning control consisting of *“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”*.
- 3.3 Section 171B(1) therefore controls the relevant timeframe for the immunity from enforcement action, which means such a development becomes immune from enforcement action after 4 years.
- 3.4 The dates to demonstrate the lawfulness of the change of use are from the date of the submission, January 2024 back 4 years to January 2020. In this instance, the use was commenced in 2015 and therefore evidence has been submitted to demonstrate the change of use took place even further back than the 4-year limit, a total period of 9 years.
- 3.5 Circular 10/97 (Enforcing Planning Control) was archived in March 2014 and replaced by the National Planning Policy Guidance (NPPG). The NPPG reiterates the previous guidance of the circular and in paragraph 006 states that *“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”*.
- 3.6 It also states that *“if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicants version of events less than probable, there is no good reason to refuse the application, provided that the applicants’ evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability”*.
- 3.7 The following section outlines the evidence submitted within the appendices, and explains how this evidences immunity from enforcement action.

## 4 Assessment of Evidence

### Appendix 01 – Council Tax Bill

- 4.1 This appendix shows a council tax bill addressed to 184 Fernhill Road, with the billing address of 184A Fernhill Road, for period 12 January 2015 – 11 February 2015. It also provides a 100% reduction for period 12 Feb 2015 – 31 March 2015 for 'empty unoccupied & unfurnished'. This letter is dated 23 February 2015, a period in excess of 4 years ago.

### Appendix 02 – Letter from VOA

- 4.2 This appendix is a letter from the Valuation Office Agency outlining that the Council had notified them that the property of 184 Fernhill Road had undergone alteration, thereby possibly altering the bands.
- 4.3 This letter is dated 3 June 2015 and organises a visit for 17 June 2015 and outlines the first-time communication was received regarding the subdivision of 184 Fernhill Road, to create 184a Fernhill Road.

### Appendix 03 – Notice of Alteration

- 4.4 This appendix includes two letters from the Valuation Office Agency, one addressed to 184 Fernhill Road, and the other to 184a Fernhill Road. These letters are notices of alterations to an entry in the valuation list occurred because the *'property was shown previously as a single dwelling but should be shown now as two or more dwellings which need separate bands.'* Both letter state that the effective date of alteration was backdated to 1 April 2015.
- 4.5 This appendix demonstrates the physical separation was corroborated by the VOA following the visit on 17 June 2015, a period in excess of 4 years prior to this submission.

### Appendix 04 – VOA Website

- 4.6 Appendix 04 is supported by this appendix, which is a print screen of the Valuation Office Agencies website, which demonstrates 184A Fernhill Road has been independently taxed since 1 April 2015.

#### Appendix 05 – Quote for Works

- 4.7 This appendix is an email from Dreaming Spires Construction dated 27 January 2017 outlining the discussed internal and external works that the applicant had requested, as well as a quote for these works.

#### Appendix 06 – Delegated Report

- 4.8 This appendix is the Delegated Report for the refusal of application ref. 22/01365/CEU – Application to certify that the existing sub-division of dwelling into 1 x 5 bed and 1 x 3 bed dwellinghouses (Use Class C3) is lawful development.
- 4.9 The report is dated 13<sup>th</sup> December 2022 and refers to the letter from the Valuation Office Agency (VOA) (Appendix 02) when stating ‘*this evidence shows that the property has been physically sub-divided into two separate dwellings as of October 2015,*’ a period in excess of 4 years prior to the date of submission of this application.

#### Appendix 07 – Email Chain

- 4.10 This appendix is the email chain between the Case Officer and Planning Consultant for application ref. 22/01365/CEU.
- 4.11 The email dated 7<sup>th</sup> November 2022 from the Case Officer states, “*We are in a position where we can part approve, part refuse the certificate. It is clear that the proposed extension was completed some time ago and the building works forming the subdivision too place and were confirmed by council tax/valuation records in 2015,*” This appendix further supports that the subdivision and works were completed in a period in excess of 4 years prior to the date of submission.

#### Appendix 08 – Email Chain

- 4.12 This appendix is the email chain between the Development Management Team Leader (East) and Bluestone Planning. It provided a reasoning for the change in outcome of the application following a previous recommendation for approval. As such, the team leader states that ‘*in terms of moving forward there is nothing to stop your client reapplying for a certificate for the building works only as I think we have made it clear that this is likely to be granted.*’
- 4.13 As such this appendix is included to demonstrate the 4 year lawfulness timeframe having passed.



## 5 Conclusion

- 5.1 The relevant test for lawful use applications is the 'balance of probability'. Based on the submission of information, including seven evidence appendices, which can be relied upon as true, clear and unambiguous, it is submitted that the subdivision of the dwellinghouse took place a period of 9 years ago, well in excess of the 4-year immunity period for enforcement.
- 5.2 If the Council are in possession of any information that leads them to a different view to than set out above, we ask that we have the opportunity to examine this information to ensure a fair and balanced assessment, in line with NPPG paragraph 006 which states that *"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."*
- 5.3 However, it is considered that the submitted evidence meets the tests of being clear and unambiguous. It is therefore requested that on the balance of probability, the application for a certificate of existing lawful use for the subdivision and operational works of the original dwelling is granted.