

11B Court Yard, London SE9 5PR

Use of single-storey as one self-contained residential unit – Supporting Statement on application for Lawful Development Certificate under section 191 of the Town and Country Planning Act 1990 (as amended)

1. The Application property, its planning history and background

- 1.1 In July 2018 planning permission (ref. 18/1457/F) was granted for the ‘construction of a single-storey building for use as an office (Class B1a) with associated cycle storage’. A copy of the planning permission is provided as **Appendix A**. The permission was subsequently implemented and a Building Control Certificate was issued in January 2020. A copy of the certificate is provided as **Appendix B**, and the approved plans are provided as **Appendix C**.
- 1.2 The building is located to the rear of 11 Court Yard and is accessed by a narrow lane which runs between no 11 and no 17 Court Yard. Given its positioning the building is not visible from Court Road, the main street, which fronts the Court Yard terrace.
- 1.3 The Building was first let as a two-bed residential flat on 8 February 2020, confirmed by the documents provided (see Section 2). A floorplan of the flat is provided as **Appendix D**.
- 1.4 In September 2019 the owner (the applicant) specifically requested of the Council that its business rates team visit the premises prior to Altitude Assets Ltd using the building for office purposes, **Appendix E**. However, the Council erred by registering the property for Council Tax, instead. To confirm this Council Tax bills (2020, 2021, 2022 and 2023) for no 11B are provided as **Appendix F**.
- 1.5 From October 2019 until mid-January 2020 Altitude Assets Ltd occupied the building as intended. A Certificate of Insurance, commercial EPC and other supporting documentation confirming this is provided as **Appendix G**.
- 1.6 However, the firm then vacated the premises and, from 8th February 2020 the building has been used as a 2-bed self-contained residential unit.
- 1.7 On 6 January 2021 an e-mail was received from the Council’s planning team, the fourth paragraph of which states:

‘The unit is also the subject of an enforcement case (E/20/0461) due to an unlawful use as a residential unit which is a breach of condition 5 of permission 18/1457/F. The submitted existing ground floor plan appears to be a duplicate of the proposed ground floor plan and does not indicate the use or layout of the unit.’
- 1.8 A copy of the e-mail is provided as **Appendix H**.
- 1.9 In the event the residential use continued – Certificates of Insurance for years 2020-2024 is provided as **Appendix I** - and the Council has not used its powers to remedy the contravention ie the requirements of condition 5 being breached.

- 1.10 Given the terms and conditions of planning permission 18/1457/F granted the applicant sought to discharge those conditions which required approval of details. As such, the details relating to the external materials used and soft landscaping were approved. In terms of refuse storage and cycle storage facilities, these have been provided for the flat and are utilised, accordingly despite the Council's refusal to approve the details relating to these two matters.
- 1.11 Finally, Altitude Assets Ltd provided a letter for the benefit of the tenant, addressed to the Council, on 21 April 2023 detailing the residential use of the building. A copy of the letter is provided as **Appendix J**.

2 Main Evidence

- 2.1 This comprises of the following documents, provided as appendices, as referenced.

Tenancy Agreements, Bank Statements and Statutory Declarations

1st Tenants 08.02.2020 Yalcin Gilgil and Seher Gilgil; plus Bank Statements, March 2020 – March 2023, statement of account and email correspondence with the tenant.

(Appendices K, K1, K2 & K3)

2nd Tenants 01.04.2023 to present Halil Ilpek and Zehra Ilpek

(Appendix L & L1)

Two statutory declarations have been sworn and produced. The first is from Yalcin Gilgil, dated 10th November 2023, and the second is from Halil Ilpek, dated 16th January 2024. These confirm the building's residential occupation and are provided as **Appendices M, N & O** respectively.

Gas Safe Certificates from 2019 to 2023 are provided as **Appendix P**.

Various additional evidence comprising of utility bills and a furniture invoice is also being supplied to supplement the main documents relied upon and highlighted above, as **Appendix Q**.

3 The Legal position

- 3.1 Section 171(B) of the Town and Country Planning Act 1990 says 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.
- 3.2 Section 191(2) of the Town and Country Planning Act 1990 (as amended) sets out the circumstances in which 'uses and operations are lawful', meaning that s191(2) applies to s192 as well as s191 and to any consideration of lawfulness in an appeal made under s174(2). Under s191(2), uses and operations are lawful at any time if:

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of an enforcement notice then in force.

- 3.3 Similarly, s191(3) provides that a failure to comply with any condition or limitation is lawful at any time if (a) the time for taking enforcement action has expired and (b) it does not constitute a contravention of the requirements of any enforcement notice or breach of condition notice then in force.
- 3.4 Section 191(6) provides that the lawfulness of any use, operation or failure to comply with condition for which a lawful development certificate is in force under s191 'shall be conclusively presumed'.
- 3.5 It must be mentioned here that the development was implemented in accordance with the approved plans, as per condition 1 imposed. The contravention actually occurred subsequent to the approved development's completion.
- 3.6 Regarding the breach of condition 5 I refer to the Court of Appeal judgement of *Arun DC v FSS and Brown* [2006]. In judging that the four year immunity bar applied in such instances rather than the ten year period as is usual where conditions are breached (see s171A and s171B of the 1990 Act, as amended) the transcript reveals pertinent comments by the judge:
- 3.7 In paragraph 22 it is stated:

"For the reasons advanced by Mr Brown and, to an extent, anticipated by my summary earlier in this judgement of the effect of the relevant statutory provisions, I am of the view that s175B(2), on its plain words, read with s171A(1) and the remainder of s171B, applies the four year bar to a breach of condition as to or limitation on a change of use, whether material or not, to a single dwellinghouse..."

- 3.8 Paragraph 27 continues:

"...it would be illogical for there to be a different period for enforcement, depending on whether the breach of planning control within the meaning of s171A(1) involving a change of use involves a failure to comply with a condition as well as, or instead, development without the required planning permission."

4 Assessment

- 4.1 In acknowledging the various supporting evidence the single-storey building known as 11B Court Yard constitutes a self-contained residential flat in its own right, thereby according with the judgement of *Gravesham BC v SSE* [1982] 47 P & CR 142.
- 4.2 In the case of *Swale BC v FSS & Lee* [2005] EWCA Civ 1568 it was held that use as a dwellinghouse must be 'affirmatively established' over the four-year period before an occupier does not have to be continuously or regularly present in order for it to remain in such use. The correct approach is to ask whether there was any period during the four years when the Council could not have taken enforcement action against the use, because the building was not

physically occupied, even though available. It is also necessary to make a finding as to whether any periods of non-occupation were de minimis.

- 4.3 Given these circumstances the material date, or the date from which continuous occupation must be shown for the residential use of no 11B is four years before the date of declaration on the LDC application form.
- 4.4 The Council could clearly have taken enforcement action against the residential use throughout the past four years but, despite its e-mail of 6 January 2021 (**Appendix H**), it chose not to. Any break between the two tenancies was de minimis and did not affect the continuity of use. The substantive test by way of the *Swale* case was therefore met.
- 4.5 Most importantly, the building was not erected with a view to its use for residential purposes. It was initially used for commercial means but was changed to residential use. This amounted to an unauthorised material change of use which was vulnerable to enforcement action which, if taken, could have required that the use cease. Instead, the use of the property as a self-contained residential flat unit is now, due to the passage of time, immune from enforcement action under the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).

5 Conclusion

- 5.1 With the authority of the case of *Arun DC*, and also having regard to the judgement in the *Swale* case it is considered that the flat's' residential use has become affirmatively established and has effectively now acquired the status of lawfulness in planning terms.
- 5.2 The various documentation confirms that this requirement has been met.
- 5.3 Accordingly, under s191 it is requested that a lawful development certificate stating '*Use of 11B Court Yard, London, SE9 5PR as a 2-bed self-contained residential flat*' be issued to formalise the planning position.