

# Supporting Planning Statement



***Certificate of lawfulness to confirm use of property as 3 flats  
(Use Class C3)***

92 Lipson Road | St Judes | Plymouth | Devon | PL4 8RJ

**April 2024**

## 1. Introduction

- 1.1. This Supporting Planning Statement has been prepared by RH Town Planning Ltd on behalf of Mr Nigel Pascoe (the applicant) in support of an application for a certificate of lawfulness to confirm the use of 92 Lipson Road as three separate flats (Use Class C3).
- 1.2. The statement provides a description of the site and proposed development. It considers the planning history and provides information about the previous use of the property.

## 2. Site Description

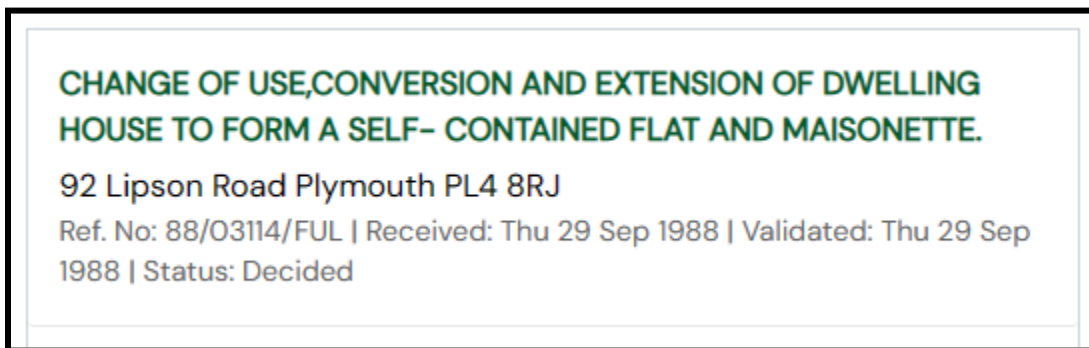
- 2.1. The site is located within the St Judes area of Plymouth. The property is an impressive 2 storey period terrace on the eastern side of Lipson Road. The building's front elevation faces onto the road and presents a 2 storey bay window to the front elevation, with the property entrance at ground floor which is accessed directly from the street. The property has a traditional pitched roof, with accommodation in the loft space. In terms of character and appearance is typical of many terraced Victorian properties, presenting an attractive facade to the street.
- 2.2. The surrounding area is mixed in character and contains further residential development in the immediate vicinity. Mutley Plain shopping centre is a short walk to the north of the site. This provides a full range of amenities and includes convenience shopping in the form of small supermarket outlets, a mix of pubs, bars and cafes and other retail premises including Boots and Superdrug
- 2.3. The area is well served by public transport with many of the city's bus routes passing through Mutley Plain. Overall, it is a very sustainable location which is also within walking distance of the City Centre and Ebrington Street. In terms of character, the immediate surrounding townscape is characterised by period development, much of which comprises of terraced dwellings that have previously been converted to flats from large single residences.

3. Proposal

3.1. A lawful development certificate is sought with regards to the use of the property as three separate flats.

4. Planning History and Baseline

4.1. Planning history listed below:



4.2. The above application was refused

5. Main issues

5.1. Section 191 of the Town and Country Planning Act 1990 contains the provisions for the Local Planning Authority for considering Certificates of Lawfulness of Existing Use or Development. Section 191(4) states “If on an application under this section, the Local Planning Authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local authority or a description substituted by them, they shall issue a certificate to that effect, and in any other case they shall refuse the application.”

- 5.2. Works undertaken to convert the property into three apartments were completed on the 2nd April 2012.
- 5.3. Details submitted in support of this application include Assured Short Term Tenancy Agreements (ASTs) for all 3 flats (dating back to 2013) and utility bills. A summary of the ASTs submitted, which flat they relate to and the time periods covered are summarised in Appendix A.
- 5.4. First occupation of the separate flats occurred in April 2012 and subsequent to this all three flats (Flat 1, Flat 2 and Flat 3) have been in use as separate dwellings occupied by either a single person or a couple, within use class C3 of the Use Classes Order.
- 5.5. It is a material matter of fact in planning law that the underlying use of the building throughout is therefore as 3 dwelling houses (*Bloomfield v SSETR Queen's Bench Division 10 March 1999*).
- 5.6. The three separate dwellings continue to possess all the necessary facilities for independent living and are considered to be separate dwelling houses (i.e Use Class C3 of the Town and Country Planning (Use Classes) Order 1987). (*Gravesham Borough Council v. Secretary of State for the Environment and Michael W O'Brien 1982*).
- 5.7. This definition was further explored in *Moore v Secretary of State for the Environment and New Forest District Council* in the judgement of Nourse LJ, where the Court of Appeal endorsed the conclusions of McCullough J in the Gravesham Case as follows: "McCullough J.'s judgement contains a valuable discussion of the circumstances in which a building might or might not be regarded as being a dwelling house. He concluded that the distinctive characteristics of a dwelling house is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. In coming to that conclusion, he firmly rejected the notion that a building, which had that characteristic ceased to be a dwelling house because it was occupied only for part or parts of the year or at infrequent or irregular intervals or by a series of different persons. In my judgment, McCullough J.'s approach ..... was entirely correct".

- 5.8. The operational development works undertaken over 10 years ago to create the separate dwellings are also considered to be lawful (Section 56 of the Town and Country Planning Act 1990 applies) and no enforcement action can be taken in respect of any breach of planning control which may be constituted by those matters. S171B of the Town and Country Planning Act 1990 (as amended) sets out the time limits for taking enforcement action. In the case of operational development or the change of use of any building to use as a dwelling house, the time limit is 4 years.
- 5.9. The information submitted as evidence in support of this CLEUD application comprises:
- ASTs for all 3 flats dating back to 2013.
  - Current Council Tax and Utility Bills for all 3 flats.
- 5.10. The Court has held (see *FW Gabbitas v SSE and Newham LBC* (1985) JPL 630) that the applicant's own evidence does not need to be corroborated by other 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 approving the application "on the balance of probability."
- 5.11. The time limit for taking enforcement action against a breach of planning control consisting of the carrying out of building operations on land and associated change of use a breach of planning control consisting of the change of use to a dwellinghouse(s) is four years, as provided by Section 171B of the Town and Country Planning Act 1990 (as amended). Section 171B(2): "Where there has been a breach of planning control consisting in the change of use of any building to use as a dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach".
- 5.12. The use of 92 Lipson Road as a 3 separate flats (Use Class C3) is therefore lawful as the 1990 Act (as amended by Section 10 of the Planning and Compensation Act 1991) provides at Section 191(2) that

uses are lawful and no enforcement action may be taken in respect of them because the time limit for enforcement action has expired.

5.13. It is therefore concluded that on the balance of probabilities, the use of 92 Lipson Road as 3 separate dwellings is lawful and a Certificate should therefore be granted.

5.14. The information referenced above confirms that the use of the property as unrestricted separate flats (C3 use) is lawful (the alterations were undertaken more than 4 years prior to this application and the property has always been used as separate accommodation and never as ancillary accommodation).

## 6. Conclusion

6.1. For the reasons outlined above, the development comprising use of 92 Lipson Road as 3 separate dwellings is considered to be lawful and a Certificate of Lawfulness should therefore be issued for this application.