

SUPPORTING STATEMENT**Application for a Lawful Development Certificate for Existing Use as a Large HMO (Sui Generis)**

Property: 354 Wilmslow Road, Fallowfield, Manchester, M1 6AB

Applicant: David Navin Holdings Limited

Submitted on behalf

of the Applicant by: Gateley Legal, Ship Canal House, King Street, Manchester, M2 4WU

1. INTRODUCTION

1.1 There is no planning permission authorising the use of the Property as large sui generis HMO and therefore Gateley Legal submit an Application for a Certificate of Existing Lawful Use (CLEUD), to authorise the existing use of the Property as a large sui generis HMO as lawful.

1.2 This Supporting Statement is submitted in support of the Application for a CLEUD to demonstrate that on the balance of probability the existing use of the Property as a large sui generis HMO has been in operation continuously and uninterrupted for a period in excess of ten years before the date of the Application beginning in 1995 with the date of the breach and becoming lawful in 2005 after 10 years continuous and uninterrupted use and further still continuing to this present day.

1.3 Section 191(1) of The Town and Country Planning Act (***the Act***) sets out the following:

If any person wishes to ascertain whether—

(a) any existing use of buildings or other land 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.

(2) For the purposes of this Act 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

1.4 Section 191(2) (b) of the Act also sets out that:

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

There has been no planning enforcement notice served in relation to the Property.

- 1.5 Section 171B sets out the time limits with which enforcement action can be brought forward:

171B(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.

No planning enforcement action can be taken by the Local Planning Authority after ten years, starting with the date of the breach, in respect of all other breaches of planning control including a material change of use.

- 1.6 Planning Practice Guidance ('PPG') details that the Applicant is responsible for providing sufficient information to support an application. Further, the PPG provides that if a Local Planning Authority has no evidence itself, nor any 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. This is on the proviso that the Applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 1.7 The onus of proof is on the Applicant to demonstrate that, on the balance of probability, the Property was used as a large sui generis HMO continuously and uninterruptedly for more than ten years before the date of this application.
- 1.8 This Supporting Statement aims to demonstrate that on the balance of probability the burden of proof has been met to substantiate that the Property was used as a large sui generis HMO in excess of ten years prior to this application being made.
- 1.9 The following Statutory Declarations are submitted with the Application as evidence as evidence in support:
- Statutory Declaration of Rachel Cuthbert with Exhibits
 - Statutory Declaration of Neil Holland
- 1.10 This Supporting Statement will take the evidence in turn to show that the existing use of the Property as a large sui generis HMO has existed continuously and uninterruptedly in excess of 10 years from the date of the breach to the date of the Application.

2. THE PROPERTY

- 2.1 The Property is a large four storey semi-detached House in Multiple Occupation (HMO) with front and rear gardens and off-road parking that has been let since 1995 to date to between 8 and 10 unrelated student occupants. Each occupant has sole access to their own bedroom but all occupants share toilet/bathroom, laundry facilities, cooking facilities and living room with one another. The existing layout can be seen at Exhibit 2 to Rachel Cuthbert's Statutory Declaration.
- 2.2 Class C4 applies only to HMOs having not more than six residents, any HMO shared by more than six residents is outside the scope of use class C4 and is a sui generis use and therefore the Property is a large sui generis HMO having in excess of six residents since 1995.
- 2.3 The Property consisted of 9 bedrooms from 1995 to 2019 when internal changes were made to create an additional 10th bedroom. The Property has

been let to 10 unrelated student occupants since 2019 and an HMO licence was issued for the Property in 2019 authorising 10 persons. The addition of the extra bedroom and occupant has not resulted in a material change of use, no intensification of the existing use has occurred to such a degree as to bring about a material change in the character and impact of the use. The change from 9 bedrooms to 10 bedrooms is simply a continuation of the existing lawful use as a large sui generis HMO, a use that started in 1995 and became lawful in 2005 because of 10 years continuous and uninterrupted use and has continued uninterruptedly to this present day.

3. **STATUTORY DECLARATION OF RACHEL CUTHBERT AND ASSOCIATED EXHIBITS**

- 3.1 This is the account of Rachel Cuthbert, who is currently the Director of the Applicant company having been appointed as Director in 2016. From 1995 to 2016 the Property was owned and controlled by David Navin Limited of which Rachel's father, David Cuthbert, was a Director. David passed away in 2013, but during his time as Director he actively encouraged Rachel's participation with the Property. Additionally, Rachel was Secretary for David Navin Limited from 2007 to 2016.
- 3.2 In 2016 the Property was transferred to the Applicant David Navin Holdings Limited and Rachel has been a Director of the Applicant company since 28 July 2016 until present. In addition, Rachel was also a Director of Around Town Flats Limited from 2006 to 2021, a property management and letting service company who have the responsibility for managing the Property for the Company since 2008. Rachel has visited the Property between 3 and 5 times a year.
- 3.3 Rachel has declared that to the best of her knowledge the Property was used continuously and uninterruptedly as large sui generis HMO for the period between 1995 when it was owned by David Navin Limited to 2016 when it was transferred to the Applicant company. The Applicant company has used the Property continuously and uninterruptedly as a large sui generis 9 and 10 bed HMO (minimum of eight and a maximum of ten unrelated occupants) since 2006 until the present day and there has been no intervening use during this period.
- 3.4 The Property
- 3.5 Exhibit 2 demonstrates the current layout of the Property as a 10 bed HMO consisting of a shared kitchen and shared dining room / lounge on the lower ground floor, four bedrooms and one bathroom on the upper ground floor, four bedrooms and three bathrooms on the first floor and two bedrooms and one bathroom on the second floor. Prior to 2019 dating back to 1995 the Property consisted of 9 bedrooms.
- 3.6 Each occupant has sole access to their own individual bedroom but each occupant shares toilet/bathroom, laundry facilities, cooking facilities and living room.
- 3.7 AST's and Occupancy
- 3.8 Rachel's Statutory Declaration declares that since acquisition in 1995 by David Navin Limited to the present day, the Property has been occupied by a

minimum of eight and a maximum of ten unrelated student occupants who share the following basic amenities: toilet/bathroom, laundry facilities, cooking facilities and living room.

- 3.9 Exhibits 4 to 17 provide tenancy agreements for the years, 2007, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2021 and 2022. AST's for 2008 and 2009 and pre-1995 appear to have been lost because historical documentation is routinely destroyed as part of the Applicant company's internal GDPR compliance reviews. Exhibits 4 to 17 demonstrate that on the balance of probability in excess of 10 year's use of the Property as a large sui generis HMO.
- 3.10 Exhibits 18 to 21 provided by the Agent, Around Town Flats Limited, verify the AST's.
- 3.11 Paragraph 1.8 of Rachel's Statutory Declaration confirms a period of non-occupancy at the Property during 2020 due to a combination of factors including the impact of the Coronavirus epidemic and the condition of the Property and so the Applicant company took this opportunity to cosmetically update the Property. The works were completed in December 2020 and a group of ten unrelated student occupiers let the property from July 2021, being the next academic year. This period of non-occupancy does not result in the existing lawful use ceasing – there has been no abandonment of the existing lawful use nor has there been any intervening use nor any material change of use. The Applicant company used this short period of non-occupancy to simply carry out the ordinary management, maintenance and refurbishment of the Property.
- 3.12 HMO Licence
- 3.13 HMO Licences issued by Manchester City Council from 01/05/2007 to 20/08/2022 as shown by Exhibits 22 to 25 are evidence of 10 years continuous and uninterrupted use as a large sui generis HMO and demonstrate that the City Council in its capacity as licensing authority has been aware of the existing lawful use of the Property for a period in excess of 10 years.

4. **STATUTORY DECLARATION OF NEIL HOLLAND**

- 4.1 Neil Holland (MRICS), a Chartered Surveyor with twenty-five years' experience in Project Management has provided a Statutory Declaration as evidence to confirm that he was instructed by the Applicant company in August 2020 to project manage the cosmetic update works at the Property which completed in December 2020.

5. **CONCLUSION**

- 5.1 The Applicant has provided a Statutory Declaration from Rachel Cuthbert explaining how she has obtained intimate knowledge of the Property and provides a history of the Property which sets out that the Property has been used continuously and uninterruptedly as a large sui generis HMO occupied by between 8 and 10 unrelated student occupants from 1995 until present and that the Property has internally consisted of 9 bedrooms from 1995 until 2019 when it was converted into 10 bedrooms.
- 5.2 The addition of one bedroom and occupant in 2019 did not result in a material change of use and simply was a continuation of the existing lawful use.

- 5.3 The evidence provided as Exhibits to Rachel Cuthbert's Statutory Declaration provides evidence of a large sui generis HMO use at the Property, a use that has been continuous and uninterrupted for a period in excess of 10 years.
- 5.4 The short period of non-occupancy in 2020 did not result in the existing lawful use ceasing – there was no abandonment of the existing lawful use nor was there any intervening use nor any material change of use during the short period.
- 5.5 There is no planning permission authorising the use of the Property as large sui generis HMO and no enforcement action has been taken in respect of this. The Application seeks a CLEUD authorising the existing use of the Property as a large sui generis HMO as lawful.
- 5.6 In accordance with Section 191 of the Act, the burden of proof has been satisfied as it has been shown that on the balance of probability the existing use of the Property as a large sui generis HMO has been in operation continuously and uninterrupted for a period in excess of ten years before the date of the Application beginning in 1995 with the date of the breach and becoming lawful in 2005 after 10 years continuous and uninterrupted use and further still continuing to this present day and therefore the CLEUD should be issued certifying the existing use of the Property as a large sui generis HMO as lawful.

GATELEY LEGAL