

<p>HEAL Planning Hooper Enterprise Associates Limited 11 St Marys Place Shrewsbury Shropshire SY1 1DZ Email: applications@healassociates.com Telephone: 01743 369911</p>	
--	--

PLANNING STATEMENT

SITE: 7 SHOTTON WALK MANCHESTER M14 5UN

APPLICANTS: MS SOPHIE MACASKILL

PLANNING STATEMENT TO ACCOMPANY AN APPLICATION FOR A CERTIFICATE OF LAWFUL DEVELOPMENT

1. INTRODUCTION

- 1.1 An application is respectfully submitted for a Certificate of Lawfulness for Existing Use or Development to regularise the existing use of 7 Shotton Walk Manchester M14 5UN as a House of Multiple Occupation (HMO) (Use Class C4)
- 1.2 This statement has been prepared on behalf of the Applicant to accompany the application.
- 1.3 The purpose of this application statement is to demonstrate that based on the strength of facts and evidence presented, and in accordance with the applicable legislation in force, 7 Shotton Walk Manchester M14 5UN as has been in continuous use as a as a House of Multiple Occupation (HMO) since November 2006 pre-dating the implementation of an Article 4 directive which came into force on the 8th October 2011 and continues to be an HMO for well in excess of the 10 year period required by legislation and subsequent to the implementation.
- 1.4 An assessment of this application will show that the strength of the applicant's evidence presented with this statement is compelling.

2. THE LEGISLATION

- 2.1 The application is submitted in accordance with s.191 of the Town and Country Planning Act 1990, as amended.
- 2.2 Under s.191(a) if a person wishes to ascertain whether any existing use of buildings or other land is lawful they may make an application for the purpose to the local

planning authority specifying the land and describing the use, operations or other matter.

- 2.3 Under s.191(2)(a) uses and operations are lawful at any time if 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).
- 2.4 Under s.191(4) If, on receiving an application the local planning authority is 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 planning authority or a description substituted by them, they shall issue a certificate to that effect.
- 2.5 Under s.191(5) a certificate shall:
 - (a) Specify the land to which it relates
 - (b) Describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class)
 - (c) Give the reasons for determining the use, operations or other matter to be lawful; and
 - (d) Specify the date of the application for the certificate.

3. BURDEN AND STANDARD

- 3.1 In order to satisfy a local planning authority that a Certificate should be granted, the courts have held the relevant test of the evidence submitted by an applicant should be the civil law test of the balance of probabilities.
- 3.2 We will demonstrate throughout the statement that this test is unequivocally met when considering the evidence in the Applicant's favour.
- 3.3 We respectfully remind the LPA that when assessing this application, it must do so based on the evidence alone, rather than considering planning merits or policy in force.

4. THE APPLICATION

- 4.1 The applicant is seeking a Certificate of Lawfulness for Existing Use or Development under section 191 of the Town and Country Planning Act 1990 in respect of the use of the property as an HMO (Use Class C4)
- 4.2 We respectfully request that Certificate of Lawfulness for Existing Use or Development is issued to regularise the existing use of the property as a HMO.
- 4.3 The Use of the property as an HMO is evidenced for the period November 2006 to date. The Applicant purchased the property in November 2006 as an existing HMO

rented out to four tenants. Evidence will be provided for a period to show continuous use well in excess of the 10 years provided.

- 4.4 The Applicant Purchased the property in November 2006 it was already operating as an HMO when she purchased the property. It has been continually occupied as such to the present date. The Applicant has been able to provide documentary evidence from 2007 in respect of Deposit protection and 2012 in respect of extract tenancy agreements.
- 4.5 The Applicant has already applied for a certificate of lawfulness in respect of the property in 2022 under reference number 134220/LE/2022 which was refused due to some missing information. The Applicant is now making this further application, providing the missing information, in order to obtain a certificate of lawfulness for the use.
- 4.6 Applying this section of the legislation to the facts of this application we can clearly demonstrate in the evidence presented that the use of the HMO has been continuous prior to the implementation of the Article 4 directive therefore it's lawful use at that time was a Class C4 HMO. The time for taking any enforcement action has long expired. In any event 10 years of continuous use to date can be evidenced.
- 4.7 The Town and Country Planning (Use Classes) Order 1987 (as amended) defines "Use Classes" for land and buildings. In this case, the property use should fall within Use Class C4 rather than C3.
- 4.8 Under the use classes order of the Town and Country Planning (Use Classes) Order 1987 (As Amended), Use Class C4 is defined as the dominant class for Houses in Multiple Occupation.
- 4.9 S.191(4) of The Town and Country Planning Act 1990 sets out that if, on an application of the local planning authority is presented with information satisfying them of the lawfulness at the time of the application of the use, they shall issue a Certificate of Lawfulness for Existing Use or Development.
- 4.10 Based on the weight of the evidence presented within this application, we submit the Local Planning Authority will be satisfied that the use of the property as a HMO is lawful and a Certificate of Lawfulness for Existing Use or Development should be granted.
- 4.11 Guidance states that "where the burden of proof is on the appellant, the courts have held that the relevant test of the evidence on such matters is the balance of probability".
- 4.12 As this test will accordingly be applied by the Secretary of State in any appeal against the decision, and LPA should not refuse a certificate because the applicant has failed

to discharge the stricter, criminal burden of proof, namely “beyond reasonable doubt”.

4.13 Moreover, the Court has held that the applicant’s own evidence does not need to be corroborated by “independent “evidence in order to be accepted (see *FW Gabbitas v SSE and Newham LBC* [1985] JPL 630).

4.14 If the LPA has no evidence of its own, or from others, to contradict or otherwise make the applicant version of events less than probable, there is no good reason to refuse the application, provided the applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a Certificate on the balance of probability.

4.15 We submit it is clear the property has been used as a HMO in its own right for a period which pre-dated the requirement for planning permission to be obtained to change from a residential dwelling (Use Class C3) to a small HMO (Use Class C4) and in any event 10 years of continuous use to date is evidenced. **A Statutory declaration by the Applicant will accompany this statement.**

5. CONCLUSIONS

5.1 The evidence presented with this application is clear, precise and unambiguous and the fact that the evidence is corroborated is significant.

5.2 In order to grant a Certificate of Lawfulness for Existing Use or Development, the applicant must prove that the property had been used as a tenanted accommodation in the form of an HMO for 10 years which has been demonstrated.

5.3 Permitted development prior to the implementation of the Article 4 directive on the 8th October 2011 and continued permitted use of the same thereafter has been achieved by virtue of the statutory declarations and evidence submitted with this application.

5.4 The Statutory Declarations and supporting evidence presented with this application demonstrate that without any shadow of doubt this was the case.

5.5 It is respectfully submitted that on this basis, the applicant has exceeded the civil law standard of proof required, namely on the balance of probabilities.

5.6 Upon an assessment of the overwhelming evidence presented we submit the LPA is drawn inexorably to one conclusion. This being that a Certificate of Lawfulness for Existing Use or Development should be issued. On that basis we respectfully request that this application is granted.

6. RECOMMENDATION

6.1 The Planning Authority is respectfully requested to approve this application and grant the Certificate of Lawfulness for Existing Use or Development.

**HEAL Planning
11 St Mary's Place
Shrewsbury
SY1 1DZ**

Supporting documents to accompany this statement:

RE: 7 SHOTTON WALK MANCHESTER M14 5UN

- **EXHIBIT 1 – Statutory Declaration by the Applicant**
- **EXHIBIT 2 – Extract Tenancy Agreements from 2012 (with explanation from Applicant) ***
- **EXHIBIT 3 - Extract Deposit protection certificates from 2007 ****
- **EXHIBIT 4 – Photographs and Floor plans**
- **EXHIBIT 5 – Email correspondence with Council re: previous LDC Application**

* Front and signing pages only where available to keep attachment size down

** unsigned as these were emailed to the tenants in this format for their own records