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01 Introduction

- 1.1 This statement is produced to support a Section 191 Certificate of Lawfulness Application submitted to London Borough of Richmond Upon Thames to confirm that buildings to the rear of 238 Sandycombe Road have been used as a workshop, storage room, and tea break room in conjunction with the adjacent MOT and car servicing use to the rear of No 240 Sandycombe Road.
- 1.2 The buildings to the rear of 240 Sandycombe Road have been utilised for car servicing as per planning permission 92/0601/FUL formally since 1991 and prior to this date. The buildings to the rear of No 238 Sandycombe Road were absorbed into the MOT and car servicing use in 1999. This application seeks to confirm the use of the buildings to the rear of 238 Sandycombe Road formally, alongside the buildings to the rear of 240 Sandycombe Road which already have permission.
- 1.3 The buildings to the rear, outlined in the red line which accompanies this application, have been utilised by the MOT and car servicing business (Mastercar LTD) since 1999 until the present day.
- 1.4 This planning statement will introduce the meaning of 'development' in accordance with the Town and Country Planning Act 1990, summarising the relevant legal tests with which this application adheres. The conclusion reached is that the development is lawful, and that no enforcement action can be taken.
- 1.5 This statement will cover the background to the application and provide detailed evidence in the form of Statutory Declarations and other supporting evidence which demonstrates, on the balance of probabilities, the buildings to the rear of 238 Sandycombe Road were utilised for MOT and car services in conjunction with Mastercar LTD.

1.6 In addition to this planning statement, the application is accompanied by the appropriate planning application forms and ownership certificate, alongside the following documents.

- Site Location Plan
- Site Block Plan
- Floor Plans
- Statutory Declarations

02 Site Location & Description

2.1 The application site contains 240 and 238 Sandycombe Road and the buildings to the rear. The site contains two retail units which sit adjacent to Sandycombe Road.

2.2 Access to the site is afforded to the north of No 240 Sandycombe Road whilst another smaller access is also provided from Alexandra Road which connects to the rear of the site.

2.3 The surrounding area is predominantly residential in nature and comprises mostly terraced housing with some semi-detached dwellings. These dwellings have no special architectural style.

2.4 The site is located within a conservation area whilst the buildings in question are also buildings of townscape merit.

2.5 The application site is not located in the Green Belt, whilst it is located within Flood Zone 1 ensuring that there is no flooding risk associated with the site.

03 Planning History

3.1 The application site's history is extensive and provides an insight into the timeline of events. The history provides clarity regarding what parts of the site are already lawful and what parts of the site are subject to this application to regularise their lawful use.

Application	Description	Decision
90/0988/S53	Use of ground floor, yard, and rear parts of premises as B1 office use (No 240)	Granted 1990
92/0601/FUL	Use for servicing and repairs of motor vehicles (No 240)	Granted 1992
94/1129/FUL	Extension to existing garage (No 240)	No Decision
97/0382	Erection of single storey extension at rear to provide storage area (No 240)	Refused 1997
98/0873	Use of existing workshop as car maintenance area (No 238)	Refused 1998

3.2 As can be seen in the above table, the use of the ground floor, the rear yard and the rear buildings of No 240 as B1 offices was approved in 1990. Therefore, the use of the current offices to the rear of the buildings are lawful as per this planning permission.

3.3 An application was then approved in 1992 for the use of the buildings to the rear of No 240 for servicing and repairs for motor vehicles. Appendix 1 shows the full set of plans that were approved; however, it is clear that the buildings to the rear of No 240 are lawful for MOT and servicing use.

3.4 As can be seen an application was made to combine the two sites, with the buildings to the rear of No 238 sought to be utilised by the existing commercial business with a planning permission sought in 1998. However, this was refused by the local authority.

- 3.5 The planning history makes it clear that the site (to the rear of 240 Sandycombe Road) was lawfully used for MOT and car servicing. It is clear that the owners of the site sought to utilise the buildings to the rear of 238 with a planning permission being submitted.
- 3.6 The applicant confirms that in 1999, they used the buildings to the rear of No 238 without planning permission. The planning history and its sequencing reaffirms this.

04 Town and Country Planning Act

4.1 Section 191 of the Town and Country Planning Act 1990 states that development is immune from enforcement after 10 years in no enforcement action has been taken. The proposed development is lawful for the purposes of section 55(3)a of the Town and Country Planning Act 1990.

(1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted 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
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

- (a) the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,

- (b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or
- (c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

(4) 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 planning 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

- 4.2 Section 171A 1(B) 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 (3) relates to breaches of planning control consisting of *"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"*.
- 4.3 Section 171B (3) therefore controls the relevant timeframe for the immunity from enforcement action, which means such a development becomes immune from enforcement action after 10 years.
- 4.4 The buildings to the rear of No 240 Sandycombe Road are subject to planning permission and, thus, are lawful. The buildings to the rear of No 238 Sandycombe Road, subject to this application, have been used

for MOT and car servicing since 1999. The buildings have been utilised for circa 25 years and, thus, are immune from enforcement action and are lawful.

- 4.5 Evidence has been submitted to demonstrate that the buildings subject to this application have been utilised for 10 years. Statutory declarations accompanying this application provide evidence which confirms the claims made within this submission. These are discussed in further detail below.
- 4.6 Circular 10/97 (Enforcing Planning Control) requires that the onus of proof to demonstrate lawfulness is on the applicant, not the Local Planning Authority. The document also states that *“local authorities are advised that if they have no evidence of their own to contradict or undermine the applicant’s version of events, there is **no good reason to refuse** the application, provided that the applicants evidence is **clear and unambiguous** to justify the grant of a certificate.*
- 4.7 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.
- 4.8 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 counterevidence.
- 4.9 In the case of applications for existing use, 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, provided the applicant’s evidence

alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.

- 4.10 It is established case law (F W Gabbitas v SSE and Newham LBC [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. This case also established the relevant test for Lawful use applications with this being the "balance of probabilities".
- 4.11 There is no requirement for the evidence to be wholly definitive and the local authority must issue a Certificate, unless it has contrary evidence of its own which would contradict the applicant's version of events. We respectfully suggest that the "balance of probabilities test" is well founded and made.

05 Assessment of Evidence

- 5.1 Appendix 01: Approved Plans Associated with Application 92/0601/FUL
- 5.2 These plans highlight the area to the rear of No 238 and No 240 Sandycombe Road which in subject to existing planning permission for use as a MOT and servicing centre. This history shows which areas require planning permission, with this certificate seeking to obtaining permission for the outstanding area and outlined within the red line submitted alongside this application.
- 5.3 Appendix 02: Statutory Declaration by Mr Gareth Porter
- 5.4 A statutory declaration is submitted by Mr Gareth Porter which confirms that he purchased 240 Sandycombe Road and the land/buildings to the rear in 1991. Planning permission was obtained for the use of the land

for servicing and repairs of motor vehicles with the company being named Mastercar LTD.

- 5.5 Mr Gareth Porter confirms that he has owned this land from 1991 until the present day.
- 5.6 Mr Gareth Porter confirms that in 1998 he purchased the adjacent site, No 238 Sandycombe Road and the land to the rear.
- 5.7 Mr Gareth Porter confirms that in 1999 he expanded the Mastercar LTD operations to include the buildings to the rear of 238 Sandycombe Road, circa a year after purchasing this land.
- 5.8 Mr Gareth Porter confirms that the buildings have been utilised by the MOT and servicing business from 1999 until the present day.
- 5.9 Mr Gareth Porter confirms that the rooms that seek permission through this submission are a break room, storage room, and a workshop. All of the buildings have been used for these specific uses since 1999 until the present day.
- 5.10 Appendix 03: Statutory Declaration by Mr Savage
- 5.11 A statutory declaration is submitted by Mr Savage who is a previous employee who worked for Mastercar being (DATE) and (DATE).
- 5.12 Mr Savage confirms that throughout his employment he utilised the buildings outlined in red within the plan attached to his declaration, the buildings outlined in red within this submission.
- 5.13 He confirmed that he used these buildings daily to complete his work and daily tasks.

5.14 Mr Savage confirms that each room, as labelled on the submitted plan, was used for that specific use since (DATE) until when he left the business.

5.15 Appendix 04: Statutory Declaration by Mr Graham Wallis

5.16 A statutory declaration is submitted by Mr Wallis who joined the business in June 1993. Mr Wallis confirms that when he joined the business the buildings to the rear of No 238 Sandycombe Road were already being utilised by Mastercar.

5.17 Mr Wallis confirms that the buildings outlined in red were utilised as a workshop, storage room, and breakroom throughout the duration of his employment.

5.18 Appendix 05: Aerial Imagery

5.19 Aerial imagery has been provided which highlights that the buildings subject to this application have been on site since 09/1999 which no change in build form. Aerial imagery does not go further back then this date; however, this is a clear indication that the built form was converted in 1999 as stated within the declaration's provided.

5.20 Appendix 05: Electricity Bills

5.21 Evidence has been provided showing that the rear outbuilding (9a Carlisle Avenue) has been subject to a separate electricity agreement since 2015. The rear outbuilding meter serial number matches the meter serial number within the bills - this provides further proof that the electricity bills specifically relate to the rear outbuilding. Evidence of this has been submitted with this application in the form of a video and photographs. A download of transactions (attached to this

application) from Mr Alexander Milcic's bank account proves that the electrical bill payments were taken from his bank account. The electrical installation certificate (issued in 2015) and renewal certificate (issued in 2018) highlight that independent electricity has been provided to this unit for the duration of the requisite 4-year period.

06 Conclusion

- 6.1 This statement has demonstrated that there is sufficient evidence to strongly support that buildings outlined in red have been utilised as part of the Mastercar MOT and car repairs business since 1999.
- 6.2 The relevant test for Lawful Use applications on the 'balance of probabilities. Sufficient information, including the submitted statutory declarations which can be relied upon as true, clear, and unambiguous evidence has been provided to justify this proposal.
- 6.3 If the council are in possession of any information that leads them to a different view, we ask that we have the opportunity to examine this information to ensure a fair and balanced assessment.
- 6.4 It is considered that the submitted evidence meets the tests of being clear and unambiguous. No further evidence is deemed to be required to justify that the buildings subject to this application have been used in this manner continuously for over 10 years.
- 6.5 It is therefore respectfully requested that the application for a certificate of existing lawful use is granted.

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