

Application reference: 24/1796/ES191
KEW WARD

Date application received	Date made valid	Target report date	8 Week date
15.07.2024	22.07.2024	16.09.2024	16.09.2024

Site:

Rear Of 238 - 240, Sandycombe Road, Richmond,

Proposal:

Certificate of lawfulness [existing] to confirm the buildings within the red line boundary of the submitted site location plan to the rear of 238 Sandycombe Road [drawing number: MBCS23-026/AGA001 Revision P2] have been used in connection the MOT and car servicing business to the Rear of 240 Sandycombe Road since the year 1999.

Status: Pending Decision (If status = HOLD please check that all is OK before you proceed any further with this application)

APPLICANT NAME

Mr Gareth Porter
c/o 200 Duke's Ride
Crowthorne
RG45 6DS

AGENT NAME

Mr Sam Peacock
200 Dukes Ride
Crowthorne
RG45 6DS

DC Site Notice: printed on and posted on and due to expire on

Consultations:

Internal/External:

Consultee

Expiry Date

Neighbours:

-

History: Development Management, Appeals, Building Control, Enforcements:

Development Management

Status: GTD Application:03/0783
Date:25/04/2003 Establish Use As A Shop

Development Management

Status: GTD Application:97/2739
Date:27/07/1998 Conversion Of First And Second Floor To Residential Use.

Development Management

Status: REF Application:98/0873
Date:11/09/1998 Use Of Existing Workshop As Car Maintenance Area.

Development Management

Status: PDE Application:24/1796/ES191
Date: The site has been used as a MOT service and repairs centre.

Building Control

Deposit Date: 09.10.2002 Installation of two velux windows, window replaced with door, small balcony.
Reference: 02/1954/RR

Application Number	24/1796/ES191
Address	Rear Of 238 - 240 Sandycombe Road Richmond
Proposal	Certificate of lawfulness [existing] to confirm the buildings within the red line boundary of the submitted site location plan to the rear of 238 Sandycombe Road [drawing number: MBCS23-026/AGA001 Revision P2], have been used in connection with the MOT and car servicing business to the Rear of 240 Sandycombe Road since the year 1999.
Contact Officer	Sukhdeep Jhooti

1. Introduction

Government Guidance as contained in the National Planning Practice Guidance (NPPG) indicates that local planning authority (LPA) can grant a certificate confirming that an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990. The LPA can issue the certificate upon the provision of relevant information satisfying them of the lawfulness at the time of the application of the use described in the application, or they shall refuse the application.

As such the onus of proof in a Lawful Development Certificate (LDC) application is firmly on the applicant. While the LPA should always co-operate with an applicant seeking information they may hold about the planning status of land, by making records readily available, they need not go to great lengths to show that the use, operations, or failure to comply with a condition, specified in the application, is, or is not, lawful. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate.

As set out in the Planning Practice Guidance, an application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. The applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved. Precision in the terms of any certificate is vital so there is no room for doubt about what was lawful at a particular date.

Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

This application is solely concerned with the buildings to the rear of 238 Sandycombe Road [within the red line boundary]. Access to the site is 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. The surrounding area is predominantly residential in nature. The site is within a Conservation Area whilst the buildings relating to the MOT centre and Vehicle repair garage use [application site] are locally listed as Buildings of Townscape Merit [BTM's]. The site is designated as an Area of Mixed Use and falls within Kew Village.

3. PROPOSAL AND ANY RELEVANT PLANNING HISTORY

Certificate of lawfulness [existing] to confirm the buildings within the red line boundary of the submitted site location plan to the rear of 238 Sandycombe Road [drawing number: MBCS23-026/AGA001 Revision P2] have been used in connection the MOT and car servicing business to the Rear of 240 Sandycombe Road since the year 1999.

The buildings to the rear of 240 Sandycombe Road have been utilised for car servicing as per planning permission 92/0601/FUL formally since 1992 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.

To confirm:

- **Certificate of lawfulness [existing] to confirm the buildings within the red line boundary of the submitted site location plan to the rear of 238 Sandycombe Road [drawing number: MBCS23-026/AGA001 Revision P2], have been used in connection with the MOT and car servicing business to the Rear of 240 Sandycombe Road since the year 1999.**
- **Rear of 240 Sandycombe Road has been used for car servicing on a formal basis since 1992 as per 92/0601/FUL and informally prior to this date.**
- **The buildings to the Rear of 238 Sandycombe has been used informally in connection for car repairs in connection with the car repair and MOT service centre to the rear of 240 Sandycombe Road since 1999.**

The PPG explains that a certificate for existing use must include a description of the use, operations or other matter for which it is granted regardless of whether the matters forward in a use class. But where it is within a Use Class a certificate must also specify the relevant class. In all cases the description needs to be more than simply a title or label if each problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter so as to define it unambiguously and with precision. Where a certificate is granted for one use on a planning unit which is in mixed or composite use that situation may need to be carefully reflected in the certificate. Failure to do so may result in a loss of control over any subsequent intensification of the certificated use.

The comprehensive list of planning history can be found above however the most relevant planning history is as follows:

- **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 [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.**

As can be seen above, the use of the ground floor, the rear yard and 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.

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. This permission has been implemented.

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 but this was refused as noted above.

Enforcement

There is no enforcement history associated with the application site. This application has been submitted through the applicant's own volition.

4. CONSULTATIONS CARRIED OUT

This is an application for a Certificate of Lawful Development (Existing), which is a request to the Council to confirm that the development as specified does not require an application for planning permission to be submitted to the Council. In assessing this application, the Council is making a determination of law and evidence of facts, and as such it is not considered to be necessary to undertake a public consultation.

5. AMENDMENTS

None.

6. EXPLANATION OF RECOMMENDATION

Legislation

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

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*”.

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.

The onus of proof in such applications is firmly on the applicant. The Courts have held that the relevant test of the evidence on such matters is ‘the balance of probability’.

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.

In *F W Gabbittas v SSE and Newham LBC* [1985] JPL 630) the case highlighted 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”

The buildings to the rear of No. 240 Sandycombe Road are subject to planning permission, and thus, are lawful.

The issue this certificate of lawfulness is concerned with is the buildings to the rear of No. 238 Sandycombe Road. The applicant has stated that these buildings have been used for car servicing since 1999 in connection with the car repair and MOT uses to the rear of 240 Sandycombe Road and therefore, should be immune from enforcement action.

In summary, for the council to issue a Certificate of Lawful Development (Existing) for this type of application, it is necessary for the applicant to demonstrate that, on the balance of probabilities, the use began at least ten years prior to application, and it was continuously exercised. In any other case, in accordance with Section 191(4) of the 1990 Act, it is the duty of the Council to refuse the application.

Evidence

The applicant has submitted evidence to demonstrate that the buildings outlined in red which are to the rear of 238 Sandycombe Road and are subject to this application, have been utilised for 10 years in connection with the car repair and MOT service centre use to the rear of 240 Sandycombe Road

The applicant has submitted the following:

- Appendix 01: Approved Plans Associated with Application 92/0601/FUL.

These plans highlight the area to the rear of No. 238 and No. 240 Sandycombe Road which show the use as MOT and servicing centre.

- Appendix 02: Statutory Declaration by Mr Gareth Porter

A statutory declaration has been provided 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. Mr Porter confirms that he has owned this land from 1991 until the present day. Mr Porter confirms that in 1998 he purchased the adjacent site, No. 238 Sandycombe Road and the land to the rear.

Mr Porter confirms that in 1999 he expanded the Mastercard LTD operations to include the buildings to the rear of 238 Sandycombe Road, circa a year after purchasing the land.

Mr Porter confirms that the buildings have been utilised by the MOT and servicing business from 1999 until the present day. Mr 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.

- Appendix 04 Statutory Declaration by Mr Graham Wallis

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

- Appendix 05: Aerial Imagery

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.

It is noted that appeal decisions do attach significant weight to statutory declarations given their legal implications.

7. RECOMMENDATION

Taking all of the above into account, it is considered that there is sufficient evidence available to demonstrate that on the balance of probability, the buildings within the red line boundary of the submitted site location plan to the rear of 238 Sandycombe Road [drawing number: MBCS23-

026/AGA001 Revision P2], have been used in connection with the MOT and car servicing business to the Rear of 240 Sandycombe Road since the year 1999.

Grant Certificate

Recommendation:

The determination of this application falls within the scope of Officer delegated powers - YES / ~~NO~~

I therefore recommend the following:

- 1. REFUSAL
- 2. PERMISSION
- 3. FORWARD TO COMMITTEE

This application is CIL liable YES* NO
(*If yes, complete CIL tab in Uniform)

This application requires a Legal Agreement YES* NO
(*If yes, complete Development Condition Monitoring in Uniform)

This application has representations online (which are not on the file) YES NO

This application has representations on file YES NO

Case Officer (Initials): SJH

Dated: ...21.08.2024

I agree the recommendation:

Team Leader/Head of Development Management/Principal Planner

VAA

Dated: 21.08.24