

G. Nicastro LL.B.

Planning Consultancy

60 Southbury Road Enfield EN1 1YB.

Direct Tel / Fax (+44) 020 8363 1351

E-mail nicastro@talktalk.net



Planning Statement

Section 191 of the Town and Country Planning Act 1990

Re: Metal Container at 2 Coniston Road Tottenham London
N17 0EX (The Property)

Lawful Development Certificate for the use of the Property
for the placing thereon of a metal container and its use for
storage purposes

Applicant: Priority Homes Ltd

Filed on behalf of the Applicant with its knowledge consent
and approval

1.0 Introduction

- 1.1 This Statement has been prepared in support of an application for a Lawful Development Certificate for the stationing of a metal container on the Property and its use for storage purposes
- 1.2 This Statement sets out to describe the Property and to submit evidence to demonstrate that the container located at the Property and its use for storage purposes has been so for a continuous period in excess of ten years without it being in breach of any enforcement notice or the object of abandonment or other use in the interim.
- 1.3 In addition to this Statement the application is also supported by a significant quantum of supporting information as specified in this Statement to show that the presence of the container and its use has occurred for a continuous period of at least ten years from date of this application such that immunity accrues under section 171B (3) TCPA 1990. It is this that the Applicant must show to the civil standard of proof of "on a balance of probability"
- 1.4 The NPPG identifies that the relevant test for success of such a Certificate is on the "balance of probability".
- 1.6 In addition Paragraph: 006 (Reference ID: 17c-006-20140306) of the NPPG advises that :

"A local planning authority is entitled to canvass evidence if it so wishes before determining an application. 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 counter-evidence. "

The officer will also be aware that it is open to him or her to seek clarification from an applicant on any matter. If that should arise, we invite the officer to contact the Applicant via his agent in order to so clarify. This is a manifestation of the spirit of co-operation that permeates into the planning system in order to make it more efficient.

The same Paragraph later provides that:

"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 probability".

It is the responsibility of the Applicant to provide sufficient evidence which on the balance of probability to support the application.

2. Evidence Submitted

2.1 The Appendices submitted as evidence in support of this application are formed of:

- (i) Site Location plans of the Property showing location thereon of the Container
- (ii) A selection of 6 Google Earth aerial pictures starting from July 2012, of different successive dates to the most recent one of October 2022 appearing in Schedule A. These pictures show the container at the Property in the same location. A site inspection will reveal its continued presence to date
- (iii) A selection of six photographs appearing in Schedule B showing the contents of the container and items of building material lately dispersed around the container

(iiiv) Statutory Declaration of the current tenant occupier of Flat F at 2 Coniston Road, Mr Jupp, and the AST in that regard under which Mr Jupp is holding over under section 5 of the Housing Act 1988. He has lived in the same flat for over 10 years and has a daily view of the container, both open and closed, and the adjoining area.

(v) Statutory Declaration of the Applicant's Chartered Certified Accountant addressing the VAT position on purchase of the container complete with two exhibits attached thereto.

(vi) Statutory Declaration of Mr Sean Doherty, the Director of S Doherty Ltd addressing among other things the purchase and continuous use of the container together with copies of the assets register of the company showing the purchase of the container which is still on its books and copy of a letter from Barclays Bank confirming payment for the container.

2.2 There are no pre-determined fonts of evidence which must accompany an application. Only sufficient evidence which on the civil standard of proof, on a balance of probability, renders it more likely than not that the Container has been at the Property and its use has been continuous for at least 10 years and that it is now immune from enforcement action. So rendering the use lawful for which a certificate rightly falls to be granted under section 191 of the T&CPA 1990.

2.3 It is submitted that the evidence supplied with this application collectively establishes on a balance of probability that the presence of the container and its use at the Property has existed and has been occupied continuously for a period in excess of ten years from at the latest August 2012

2.4 The Statutory Declarations, together with the exhibits, the Google Earth Images and other photographic evidence all clearly support the presence and use of the Container at the Property over a period that exceed the minimum of ten years. It is submitted that the weight of evidence leads to that conclusion and we request that the council issues the LDC applied for as the "ten year rule" has been satisfied.

3.0 Legal Background

3.1 Consideration of the council's planning policies plays no role in the determination of this application. This application is purely dependent on the relevant statutory provisions examined herein, previous PINS decisions which are material for the sake of consistency and decisions of the High Court. All of which are set out in this application.

3.2 Firstly, there is no record to show that that the placing of the container on the Property and its use has ever been investigated as a potential breach of planning control. No planning enforcement notices have been issued in respect thereto.

3.3 Section 171B (3) of the Act identifies that if a breach of planning control relates to the use then no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach such that immunity accrues.

3.4 Section 191(2) of the Town and Country Planning Act 1990 (as amended) allows for an application to be made to the Local Planning Authority for a Certificate of Lawfulness for such a use as described above.

3.5 The NPPG advises in the case of applications for existing use at Paragraph: 006 (Reference ID: 17c-006-20140306) that:

"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 probability.

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved."

3.6 In addition the Court has held (see *F W Gabbittas 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. The ratio decidendi in Gabbittas judgement provides that : -

“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 the grant of a certificate "on the balance of probability". The LPA should proceed on the basis that the planning merits of the operation, use or activity, are irrelevant to the consideration of the purely legal issues which are involved in determining an application.”

3.7 The Applicant therefore has to show that the Property has been used continuously as described in this application and that such use has occurred for at least ten years continuous years prior to the date of the application without abandonment or other intervening use arising .

3.8 The dichotomy concerning whether the presence of the container amounts to development and whether it is a building or not under Sections 55 - 57 of the T&CPA 1990 following *Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin) becomes irrelevant as its presence and use extends to more than 10 years and is thus immune from enforcement under all grounds in section 171B of the T&CPA 1990. The position was succinctly set out by a fellow professional in Paragraph 3 of PINS Decision Letter 3232214 a copy of which is attached at Appendix I

4.0 Conclusions

4.1 It is submitted that the Applicant has in this case submitted with this application

sufficient evidence to demonstrate that the Container has been on site and used for storage purposes for a continuous period greater than ten years from the date hereof

4.2 The NPPG identifies that the relevant evidential test is the “balance of probability”

4.3 Given the globality of the evidence submitted in support of this application, and the guidance contained within the NPPG, in the round, this application for a Certificate of Lawful Development falls to be approved and we request that the council does so pursuant to its powers under section 191 of the Town and Country Planning Act 1990



Signed..... Dated..... 22-12- 2022.....
Agent for the Applicants

List of Appendices

Schedule A

Six Aerial Photographs from Google Earth from July 2012 to Oct 2022

Schedule B

A selection of six contemporaneous photos of the container, its contents and the immediately adjoining area

Appendix A - Statutory declaration of Mr Varsani, and two exhibits thereto

Appendix B - Statutory Declaration of Mr Jupp

Appendix C - AST to Mr Jupp

Appendix D - Title to MX147663

Appendix E - Statutory Declaration of Mr Doherty

Appendix F - Copy of Assets Register of S Doherty Ltd

Appendix G - Copies of VAT Statement of S Doherty Ltd

Appendix H - Copy of Letter from Barclays Bank

Appendix I - PINS Decision Letter No 3232214