

Development Management
LB Haringey
Civic Centre
River Park House
Wood Green
N22 8HQ

9th March 2023
Reference JF/RE/0127

Dear Sir/Madam,

**FLAT D, 10 OVERBURY ROAD, LONDON, N15 6RH
APPLICATION FOR LAWFUL DEVELOPMENT CERTIFICATE FOR EXISTING LARGE
HMO USE (USE CLASS SUI GENERIS)**

I write on behalf of my client, Provewell Ltd, to submit an application for a Certificate of Lawfulness of Existing Use as large HMO (Use Class *Sui Generis*) at Flat D, 10 Overbury Road London, N15 6RH.

Site context

Unit D, 10 Overbury Road is located on the southern side of Overbury Road within the Haringay Warehouse District.

The building comprises 6 large bedrooms, a shared kitchen/diner, 2 bathrooms and 2 storage areas on the ground floor. The property has been occupied by more than 6 people.

The surrounding area includes light industrial/creative industries and commercial uses to the north and west and warehouse living units to the south and east. The site is not statutorily listed, locally listed nor is it within a conservation area.

Relevant Background

There is one relevant planning permission that applies to the site, which is summarised below:

HGY/2013/0765 – A certificate of lawfulness for and existing use or operation was considered not lawful on 13/06/2013 due to insufficient information as outlined below:

In pursuance of their powers under the above Acts and Order of the London Borough of Haringey as local Planning authority hereby that the above proposal described by the applicant dated 2nd May 2013 is NOT LAWFUL, under Section 171B (1) of the Town and Country Planning Act because the applicant has submitted insufficient documentary evidence to support his claim that the property has been in constant use as four (4) self-contained flats for a period more than 4 years.'

Lawful Use

The site falls within Use Class *Sui Generis* and has been in use as a large HMO for over ten years, since 2012. Therefore, the existing large HMO use at the site is lawful.

Relevant Planning Legislation

Section 191 of the Town and Country Planning Act (TCPA) 1990 (as amended) is the key statutory provision governing applications for Certificates of Lawfulness of Existing Use and Development (CLEUDs). S191 states:

- (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—*
 - (d) *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*
 - (e) *they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

[...]

The Town and Country Planning Act 1990 (as amended) s.171B (1) and (2) set out the time limit for when a breach of planning control is no longer enforceable.

- (1) *Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.*
- (2) *Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*
- (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.*
- (4) *The preceding subsections do not prevent—*

- (f) *the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or*
- (g) *taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.*

The Government's Planning Practice Guidance has the following section on the evidence and burden of proof for lawful development certificates:

"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 about the planning status of the land. 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.

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."

Compliance with Legislation

Evidence in the form of statutory declaration is attached in **Appendix A**. The statutory declaration is from Shulem Aksler, the Director of Provewell Ltd who manages the property on behalf of the owners, Kempton Investments Limited. The statutory declaration confirms that the large HMO use of the property has been continuous for more than ten years. A summary of the statutory declaration is illustrated below.

Name	Summary	Confirmation of Large HMO Use
Shulem Aksler	Director of Provewell Ltd confirming large HMO use of Flat D, 10 Overbury Road, London, N15 6RH	From 2011 to present day

Table 1 Summary of Statutory Declaration

The property has been in large HMO use since June 2011. The Assured Shorthold Tenancy (AST) Agreements enclosed in Shulem Aksler's Statutory Declaration (**Appendix A**) demonstrates that the property has been let as a large HMO for a continuous period since 3 June 2011 and is still currently in large HMO use.

As stated in Shulem Aksler's Statutory Declaration, the AST agreements would either be between one or two leaseholders who would let the whole property including Flats C and D, who will then sublet the rooms in each unit. This arrangement is consistent with other lawfully established large HMOs in the Haringey Warehouse District such as Flats 7 & 8 Stone House and Flats A-C, Unit E, 199 Eade Road. The high monthly rent demonstrates that the property is occupied by multiple tenants.

The day-to-day operations and how the property is managed in terms of rental payments, utilities/flat expenses and how vacancies are filled are outlined in the Statutory Declaration at **Appendix A**.

A summary of the AST Agreements is set out in Table 2 below. The large HMO use therefore occurred at least ten years ago, surpassing the time limit for enforcement action set out in paragraph (3) of s.171B of the TCPA 1990 (as amended).

AST Agreement type	Tenant(s)	Tenancy term/timeframes
AST Agreement	DB and DCP	03/06/2011 – 3/06/2013
AST Agreement	DB and DCP	1/11/2015 – 30/09/2019

Table 2 Summary of AST Agreements, Contracts and Extensions

The tenancy agreements 'rolled over' from 4 June 2013 to 31 October 2015 and 1 October 2019 to date, which is common for units which are rented by the same leaseholders/head tenants. The bank statements enclosed in **Appendix A** illustrate that the rental payments have been continuously made by the same leaseholders. Therefore, demonstrating that flats were fully occupied in large HMO use by the same leaseholders even though a formal AST was not in place. This is further corroborated in Mr Aksler's statutory declaration.

Moreover, the evidence attached in Appendices C and D include insurance certificates and gas safety records which account for these gaps and corroborate that the HMO use did not cease throughout this period. This is discussed further in the forthcoming sections and is also attested in the statutory declaration.

The continuous council tax liability is further confirmed by the Haringey Council Tax team, as demonstrated in a confirmation email dated 28 November 2022 attached in **Appendix B**. The email clarifies that the property has been in residential branding since 1 October 2009. Therefore, confirming that the property is an independent unit that has been in large HMO use for a continuous period of over ten years.

Domestic gas safety records for Flat D are enclosed in **Appendix C**. These illustrate that gas safety tests and inspections have been carried out annually since 11 October 2013 to 17 November 2022, with the next inspection due in November 2023. This confirms that the flat is an independent unit which has been in continuous use as a large HMO for over ten years.

Further evidence in the form of Certificates of Insurance is enclosed at **Appendix D**. The Certificates illustrate that insurance covers the entire building and denotes that Flat D is a large

HMO. This use has been insured since 22 March 2013, demonstrating over ten years of continuous use as a large HMO.

Finally, the existing large HMO layout is shown on the floorplans in **Appendix E**. It illustrates that there 6 large bedrooms a shared kitchen/diner, 2 bathrooms and 2 storage areas. The plans also demonstrates that the property has its own front entrance reinforcing its independence from the other units within the building.

Summary of Evidence

The evidence for the continuous use of Flat D as a large HMO for over ten years is summarised in the table below.

Evidence	Reference	Evidence Detail	Timeframe/date
Statutory Declarations	Appendix A	Statutory declaration signed by Shulem Aksler confirming large HMO use of Flat D.	2012 - present
		DB and DCP	03/06/2011 – 3/06/2013
		DB and DCP	1/11/2015 – 30/09/2019
Bank Statements	Appendix A (enclosed in Shulem Aksler's Statutory Declaration)	Continuous rental payments from the leaseholders listed in the AST demonstrating continuous occupation for over 10 years.	3/6/2011 - to date
Council Tax	Appendix B	Email dated 23 November 2022 from the Haringey Council Tax team confirming uninterrupted liability to council tax since 1 October 2009	1 April 2009
Utility	Appendix C	Gas safety reports Flat D, 10 Overbury Road confirming it's an independent flat in continuous residential use.	11 October 2013 to date
Certificate of Insurance	Appendix D	Certificates of Insurance confirming continuous large HMO use at Flat D.	22 Mar 2012 – 21 Mar 2023
Floorplans	Appendix E	Floorplans showing large HMO use and layout.	June 2011 – present

Table 3 Summary of Evidence

Conclusion

The evidence enclosed within this letter is considered sufficient to justify the grant of a Certificate of Lawful Existing Use on the balance of probability, in accordance with the guidance

set out in the National Planning Practice Guidance. The evidence provided demonstrates that Flat D, 10 Overbury Road is an independent unit that has been in existence and occupied as one large HMO for a continuous period of over ten years, since June 2011. Therefore, the existing large HMO use has occurred for a period of more than ten years, which has surpassed the time limit for enforcement action in accordance with paragraph (3) of s.171B and s.191 of the Town and Country Planning Act 1990 (as amended).

I trust the above is satisfactory and I look forward to the formal determination of the application.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'John Ferguson', is positioned above the printed name.

John Ferguson BSc (Hons), PG Dip TP, MRTPI

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Appendix A – Statutory Declarations (including AST Agreements and Bank Statements)

Appendix B – Council Tax Valuation Lists

Appendix C – Utility

Appendix D – Certificates of Insurance

Appendix E – Floorplans