

PLANNING STATEMENT

for

Certificate of Lawful Use/Development

Use of building as three flats



**Site at 146 Carlingford Road
London N15 3EU**

June 2026

1.0 Introduction

- 1.1 This Statement has been prepared in support of an application for a Lawful Use/development Certificate on land at 146 Carlingford Road N15 3EU for this building's continued use as three independent dwelling houses, **a use falling under Class C3 of the revised Use Classes Order (UCO).**
- 1.2 This Statement sets out to describe the site's context and submits evidence to demonstrate that this building has been in use as three separate dwellings for a period in excess of 4 years to become the lawful planning use of this site.
- 1.3 In addition to this Statement the application is also supported by further documentation as specified in this Statement.
- 1.4 In order to achieve a Certificate the Applicant must demonstrate that: -
 - “(i) the use actually occurred and therefore that the building at No. 146 Carlingford Road, London N15 3EU and as shown on the accompanying plans has been in use as three separate dwellinghouses as identified on the site and floorplans which accompany this application and that all three flats contain all of the necessary facilities for day-to-day living;*
 - “(ii) the use of this former dwelling as three flats is independent from any other dwelling(s) on the site and*
 - “(iii) the use of this identified building as three independent flats has occurred for a continuous period of four years such that immunity accrues under s171B(2) TCPA 1990.”*
- 1.5 Section 171B provides two different time-bars for enforcement action for 'breach of planning control' according to different forms of breach whether in the form of impermissible development or for failure to comply with a condition.
- 1.6 In summary, it provides a time-bar of four years from substantial completion of works for breach by way of operational development; four years from breach for one particular category only of change of use, namely the use 'of any building to use as a single dwelling house'; and ten years for 'any other breach of planning control' including occupation of a “caravan”.
- 1.7 The recent legislation in the Levelling Up and Regeneration Bill has become law and in terms of this application in summary in terms of Section 171B of the TCPA this is amended to delete the words ‘four years’ and to substitute such with ‘ten years’.
- 1.8 This legislation means that in the fullness of time that all breaches of planning control can only become immune from enforcement action after 10 years. This includes those breaches which were previously 4 years – such as change of use of a building to residential and operational development.
- 1.9 It is however key in terms of the “time bar” for this application assess such in terms of the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions)
- 1.10 Regulations 2024/452 of such are set out below:

3. Provisions of the 2023 Act coming into force on 25th April 2024

The following provisions of the 2023 Act come into force on 25th April 2024—

- (a) section 103 (temporary stop notices in relation to listed buildings);
- (b) section 115 (time limits for enforcement);
- (c) section 116 (duration of temporary stop notices);
- (d) section 117 (enforcement warning notices);
- (e) section 118 (restriction on appeals against enforcement notices);
- (f) section 119 (undue delays in appeals);
- (g) section 120 (penalties for non-compliance);
- (h) section 122 (consultation before applying for planning permission);
- (i) section 124 (powers as to form and content of planning applications).

- 1.11 Under the provision of Section 5 the “Transitional provision: time limits for enforcement”, the amendments made to the 1990 Act by section 115 of the 2023 Act (time limits for enforcement) do not apply where—

(a) in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (time limits), the operations were substantially completed, or

(b) in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred, before the day on which that section comes into force

- 1.12 On that basis this “certificate application” must be assessed against the requirements of section 171B namely whether the use of this building as three separate flats has existed for a period in excess of four years, continuously as such had occurred prior to section 115 “coming into force” on the 25th April 2024.

- 1.13 The evidence in this case identifies that the layout and use of the building as three flats commenced in 2018 up to the present day.

- 1.14 In the case of this application the Applicant submits that the building at 146 Carlingford Road N15 3EU as shown on the accompanying plans on this site has been utilised as three separate dwellings and in such cases the requirement for a Certificate to be granted is for a continuous period in excess of 4 years under s171B (2) of the TCPA 1990.

- 1.15 The NPPG identifies that the relevant test for success of such a Certificate is on the “balance of probability”.

- 1.16 In addition Paragraph: 006 (Reference ID: 17c-006-20140306) of the NPPG advises:

“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.”

- 1.17 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.

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

- Statutory Declaration of the site owners - **Appendix AP1**
- Statutory Declaration of the Managing Agents A - **Appendix AP2**
- Statutory Declaration of the Managing Agents B - **Appendix AP3**
- Statutory Declaration of Construction Company - **Appendix AP4**
- Tenancy Schedule – **Appendix AP5**
- Floor Plan - **Appendix AP6**
- Management Agreement 2021 - **Appendix AP7**
- AST Flat 1 15.12.21 – **Appendix AP8**
- AST Flat 1 15.12.23 – **Appendix AP9**
- AST Flat 2 15.12.21 – **Appendix AP10**
- AST Flat 2 15.12.23 – **Appendix AP11**
- AST Flat 3 15.12.21 – **Appendix AP12**
- AST Flat 3 15.12.23 – **Appendix AP13**

2.0 The Site

- 2.1 The site is formed by a three storey mid terraced property with a rear garden and a paved front curtilage used for refuse storage also. The street is residential with houses on all boundaries.
- 2.2 The building is not listed and not located within a Conservation Area and has a PTAL rating of 5. The site is located within Flood Zone 1. The general location of the site is shown in Figure 1 below.



Figure 1 – General site location

3.0 Planning History and Layout of the building

3.1 Most recently under reference HGY/2010/0170 a Lawful development for the use of property as dwelling with care provided for six persons was approved in 2010.

3.2 Previous to this the planning history is set out below:

HGY/2004/1642-PERM DEV-03-08-04-146 Carlingford Road London -
Erection of a single storey rear extension.

HGY/2007/0345-REF-10-04-07-146 Carlingford Road Tottenham London -
Change of use from residential to HMO.

GY/2009/1797-WDN-15-12-09-146 Carlingford Road London -Erection of
second floor extension and erection of rear dormer window

3.3 The use of the building as a separate residential dwelling, as set out within the separate Statutory Declarations, was commenced by October 2018 without the benefit of planning permission.

3.4 The Statutory Declaration of the site owner identifies that this building has been occupied as three separate flats from October 2018 up to November 2021 and then again from 15 December 2021 to the 22nd December 2025.

3.5 It is for this later period that evidence is supplied within this application including the statutory declarations of the managing agents over this time together with a tenancy schedule and relevant AST documentation.

3.6 Turning now to the internal layout of the building it possesses 2 x two bedroomed flats on the ground and first floor and 1 x one bedroom flat on the second floor and each flat has a lounge/kitchen/dining area, a separate bedroom and also a bathroom.

3.7 A plan showing the layout of this building as three flats is provided in support of this application.

4.0 Legislative Background

4.1 As set out above in terms of the transitional arrangement of S115, Section 171B (2) of the Act identifies that if a breach of planning control relating to the use of building(s) is as a dwelling(s) then no enforcement action may be taken after the end of the period of four years beginning with the date of the breach such that immunity accrues.

4.2 In terms of the use of a building as dwellinghouses the NPPG which replaced Circular 10/97 does not contain a description of such so we utilise the Circular for such advice where in paragraph 2.81 it advised:

"It is important to distinguish the term "use as a single dwellinghouse", in section 171 B (2), from what might normally be regarded as being a single dwellinghouse. Experience has suggested that, on occasion, people may adapt, or use, unlikely or unusual buildings or structures as their home or dwellinghouse. However, the Courts have held that, although there is no definition of what is a dwellinghouse, it is possible for the reasonable person to identify one when he sees it. If no reasonable person would look at a particular structure used as a dwellinghouse and identify it as

such, it is justifiable to conclude, as a matter of fact, that it is not a dwellinghouse. In those circumstances, while its use as a dwellinghouse might be immune from enforcement action, it is not a dwellinghouse as such and, accordingly, would never enjoy the benefits of "permitted development" rights."

4.3 Paragraph 2.81 of the former Circular added: -

"It is considered that the criteria for determining use as a single dwellinghouse include both the physical condition of the premises and the manner of the use. Where a single, self-contained set of premises comprises a unit of occupation, which can be regarded as a separate "planning unit" from any other part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse; and are used as a dwelling, whether permanently or temporarily, by a single person or more than one person living together as, or like, a single family, those premises can properly be regarded as being in use as a single dwellinghouse for the purposes of the Act."

4.4 Section 191(2) of the Act (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.

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

"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.*

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."

4.6 In addition the Court has held (see *F W Gabbitts 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. Importantly this paragraph advises 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 neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the

planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.”

- 4.7 The Applicant therefore has to show that the use of this building, identified within this application, has been used continuously as three independent dwellings, as described in Section 3 above, and that such has occurred for at least four continuous years as a separate and independent dwellinghouses.

- 4.8 **In this respect the evidence in this case identifies a period of occupation of all three flats within the building from October 2018, however this application is supported by evidence of the use of three flats from the 15th December 2021 to the 22nd December 2025. That use of the building as three flats also remains up to the present day.**

5.0 Residential dwelling- Relevant Case Law and Tests

- 5.1 The NPPG which replaced Circular 08/2010 does not contain a description of a dwellinghouse and therefore we continue to utilise the Circular for guidance only in this respect.

- 5.2 Annexe A (Para 3) of the former Circular advised that a single household under Class C3(a) is formed by a family (a couple whether married or not with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.

- 5.3 Paragraph 7 of Annexe A of the former Circular added that the term ‘dwellinghouse’ is not defined in this part of the Use Classes Order and adds that the question of whether a particular building is a dwellinghouse will therefore depend on the facts of that case. Importantly Paragraph 8 also added: -

“The common feature of all premises which can generally be described as dwellinghouses is that they are buildings that ordinarily afford the facilities required for day to day private domestic existence. It is recognised that unlikely or unusual buildings, such as churches or windmills, have been used as, or adapted to become, dwellinghouses. Whilst such premises may not be regarded as dwellinghouses in the traditional sense, they may be so classified for the purposes of the Use Classes Order.” (Our emphasis)

- 5.4 Finally Paragraph 9 of Annexe A of the former Circular identified that the criteria for determining whether the use of particular premises should be classified within the C3 Use Class include both the manner of the use and the physical condition of the premises. This paragraph concludes that premises can properly be regarded as being used as a single dwellinghouse where they are:

- *a single, self-contained unit of occupation which can be regarded as being a separate ‘planning unit’ distinct from any other part of the building containing them;*
- *designed or adapted for residential purposes-containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse*

- 5.5 The building which forms this application has been laid out and used as three separate dwellings each containing all of the normal facilities for day-to-day use

(facilities for cooking, eating, sleeping and washing): as established in *Gravesham BC v SSE* (1984) 47 P&CR 142.

- 5.6 For the purposes of Class C3(a) the 2010 amendment to the UCO provides that “single household” is to be construed in accordance with section 258 of the Housing Act 2004 (which sets out when persons are to be regarded as *not* forming a single household for the purposes of section 254 of that Act).
- 5.7 Thereby a single household under Class C3 (a) is formed by a single person or by a family (as defined below), or by an employer and certain domestic employees. There is no limit on the number of members of a single household under Class C3 (a).
- 5.8 Under section 258 of the Housing Act, in order to be regarded as forming a single household the persons living in the house must all be members of the same family, or (alternatively) their circumstances must be of a description specified for the purposes of section 258 by the *Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006* (S.I. 2006, No. 373).
- 5.9 The three dwellings which are the subject of this application are separate single household dwellings separated from each other in terms of occupation.
- 5.10 The description of the layout of the building in Section 3 above, together with the floorplans, defines the facilities and layout of these three dwellings which clearly identifies that the building at No. 146 Carlingford Road, the subject of this application, constitutes three self-contained dwellinghouses with each possessing all the normal facilities for cooking, eating, sleeping and bathing associated with use as separate dwellings.
- 5.11 It must of course also be shown that the use of the building has been used as three independent dwellings continuous throughout the four-year period in which immunity from planning control is said to have accrued.
- 5.12 The decision of the Court of Appeal in *Swale BC v FSS* [2005] EWCA Civ 1568 made it clear that it is not sufficient to show simply that the material change of use took place more than 4 years ago; it must also be shown that the use of this property, as three independent dwellings, was continuous throughout that 4-year period.
- 5.13 In this respect any occasional gaps in actual occupation clearly do not prevent a period of immunity arising: see for example *Basingstoke & Deane BC v SSCLG* [2009] EWHC 1012 (Admin) at [41] and *SSE v Thurrock Borough Council* [2002] EWCA Civ 226 at [28] (interruptions “because it is the week-end or the factory’s summer holiday”).
- 5.14 Furthermore in terms of authorities in *Doncaster MBC and Van Dyck v Secretary of State for the Environment* (1993) 66 P & CR 61, the Court of Appeal held that the immunity conferred by section 172(4) TCPA 1990 applied to all separate residences, including the original dwelling house, and any dwelling houses created by subdivision.
- 5.15 The general position is that for a material change of use to occur, there has to be a change in the actual activity going on (*Caledonian Terminal Investments Ltd v Edinburgh Corp* [1970] SC 271).

- 5.16 In *Impey v Secretary of State for the Environment* (1984) 47 P & CR 157, which concerned a conversion of kennels into a dwelling house without planning permission, the Court of Appeal held that a physical conversion of the site is a factor to take into account in assessing whether and when a material change of use has occurred.

The Issue of Independent use

- 5.17 The starting point in identifying the planning unit is to identify the unit of occupation (see Encyclopaedia P55.44 to P55.45 and see the “useful working rule” that it should be assumed that the unit of occupation is the appropriate planning unit).
- 5.18 The units of occupation in this case are the three flats within the building as identified in the relevant plans, that have been in use as three dwellings as clearly indicated on the submitted floor plans.
- 5.19 Importantly, and as set out within the supporting evidence, this building has been used and indeed occupied as three separate dwellings on the site and each has been the sole residence of its occupier(s) since October 2018 with the evidence in this application clearly establishing the period between 15th December 2021 to the 22nd December 2025.
- 5.20 There has been no alternative use of the site other than three flats since October 2018 and indeed up to the present the day and the site remains as three flats.
- 5.21 Given the evidence submitted in support of this application and the physical layout of this building the Local Planning Authority should rely on the three “units of occupation”.
- 5.22 **In any event, for the reasons set out above, the use of the building is plainly laid out and functions as three independent dwellings separate from each other within the overall site.**

6.0 Assessment of Evidence

- 6.1 The Statutory Declarations of the owner of the property since 2018 (**Appendix AP1**) identifies that the use of the building has been formed and laid out as three independent dwellings, since October 2018.
- 6.2 **Appendix AP4** provides evidence, via a Statutory Declaration, of the works undertaken to create these three flats on site by the building contractor employed in such works including its internal layout in 2018.
- 6.3 This confirms instructions for such building works and the completion of such works in October 2018.
- 6.4 Turning now to the occupation of the building as three dwellings for over the four year period as set out in this application where evidence is supplied for the period between 15th December 2021 to the 22nd December 2025.
- 6.5 In terms of the submitted evidence the Statutory Declaration at **Appendix AP1** of the site owners, identifies that this building was let directly by them from October 2018 until November 2021 to individual tenants however there is little retained paperwork for this period of lettings.

- 6.6 On the basis of such evidence it is clear that the owners of the property are party to the knowledge of actual occupation and accommodation of this building since this date.
- 6.7 Importantly this Statutory Declaration (Appendix AP1) also established that for the period from 15th December 2021 until 22nd December 2025 that all three flats in this building were let on a “fixed rent guarantee” basis to Forward Community Care Ltd.
- 6.8 There is a Management Agreement in this respect provided at **Appendix AP7**.
- 6.9 The Statutory Declaration of Priory Studio Ltd trading as Fab Homes (**Appendix AP2**) confirms that the three flats within this building were all let to Forward Community Care Ltd between 15th December 2021 until 22nd December 2025.
- 6.10 The Statutory Declaration of Forward Community Care Ltd (**Appendix AP3**) confirms that the three flats within this building were let to individual tenants with no significant gaps in occupation from the 15th December 2021 until the 22nd December 2025.
- 6.11 The list of the individual tenants who occupied all three apartments from the 15th December 2021 until the 22nd December 2025 are provided at **Appendix AP5**.
- 6.12 Furthermore, the evidence within Appendix AP3 identifies that during “this time of occupation” in terms of support to residents no on site care or supervision was provided however residents were visited at their homes by members of that Company’s staff as and when required.
- 6.13 The rent for these three flats was paid by Forward Community Care Ltd directly to the site owner Mr Mukesh Patel.
- 6.14 On the basis of such evidence it is clear that Forward Community Care Ltd had direct knowledge of the actual occupation and accommodation in terms of the three apartments within this building since the 15th December 2021 until the 22nd December 2025.
- 6.15 Furthermore, this Statutory Declaration clearly identifies that since on the 15th December 2021 this building was rented out as three independent dwellings, without any significant period of vacancy. In addition, they confirm that they were also regular visitors to the site during this period.
- 6.16 We are unaware as to whether individual residents paid Council Tax. Furthermore, each flat within the building has its own individual power and water supplies which are billed directly to and paid by the tenants.
- 6.17 The relevant AST documentation for all three flats is provided at Appendix A8 - AP13
- 6.18 **It is submitted that this evidence collectively establishes beyond reasonable doubt that the building at no 146 Carlingford Road has been laid out and occupied as three independent dwellings for a period well in excess of 4 years namely from October 2018 and specifically between the 15th December 2021 up to the 22nd December 2025.**
- 6.19 All three flats are currently undergoing a refurbishment program ready for their reletting.

Land Use

- 6.20 The certificate is sought for the use of the site as three independent apartments under Class C3(a) of the UCO. The company which leased the three apartments for the duration of the greater than four year period submitted in this Certificate Application was Forward Community Care Ltd.
- 6.21 The Statutory Declaration of this company clearly specifies that no on site care was provided for the duration of the leasing of these three flats.
- 6.22 The Town and Country Planning Use Classes Order outlines that use Class C3(b) permits use as a dwellinghouse by not more than six residents living together as a single household, where care is provided for residents. It also defines Use Class C2 as use for the provision of residential accommodation and care to people in need of care (other than use within C3).
- 6.23 As set out in the tenancy schedule the occupiers of the 3 apartments did not come to it as a “single group” and there were no communal facilities within the building as all three apartments had all necessary facilities for “day to day” living behind their own “front doors”.
- 6.24 In light of the internal arrangement of the building and that occupiers were individuals unknown to each other (not a single group) together with the lack of communal facilities clarifies that the use undertaken would not fall under Class C3(b) of the UCO. In addition, no care facilities or staff were provided on site and as a result the site could not have been classed as a C2 use given the clear requirements for such provided in the UCO.
- 6.25 Given the layout and evidence supplied it is submitted that the use of the building over the period for which the certificate is sought and indeed before than was three independent dwellings.**

The Four year Rule

- 6.26 In addition to the above evidence it must also be shown that the use of the building, as three independent dwellings has been continuous throughout the four year period in which immunity from planning control is said to have accrued.
- 6.27 Case law, identified above, acknowledges that occasional gaps in actual occupation do not prevent a period of immunity arising.
- 6.28 The evidence submitted with this application, in the form of the Statutory Declarations and the other additional exhibits, clearly supports substantial evidence that the use of this building as three independent dwellings has been so for well over a four-year period namely from October 2018 and more specifically from the 15th December 2021 until 22nd December 2025 and onwards to the present day as the flats are currently undergoing refurbishment.
- 6.29 In this respect all of the Statutory Declarations supporting this application confirms that the building, the subject of this application, was converted into three separate flats, one on each floor, in 2018 and all three were occupied as separate and independent dwellings from October 2018 and more specifically from the 15th December 2021 until 22nd December 2025 and onwards to the present day.

- 6.30 Importantly this substantial weight of evidence leads to a conclusion that the former dwelling at No. 146 Carlingford Road, has been in “continuous” use as three independent residential units of occupation since October 2018, and most certainly from the 15th December 2021 until 22nd December 2025 thereby comprising of a period in excess of four years.
- 6.31 **It is concluded therefore that the Statutory Declarations and the associated supporting paperwork establishes on the “balance of probability” that the four year “rule” has been passed in this case for the use of the building as three independent dwellings, the subject of this application.**
- 7.0 **Conclusions**
- 7.1 It is submitted that the Applicant has in this case submitted with this application sufficient evidence to demonstrate that the building at No. 146 Carlingford Road has been used as three independent dwellinghouse for a continuous period of greater than four years from October 2018 and more specifically from the 15th December 2021 until 22nd December 2025 and remains so to the present day.
- 7.2 The NPPG identifies that the relevant test for success is the “balance of probability” and given the evidence supporting this application it is submitted that the building the subject of this application has been utilised three dwellings since October 2018 and more specifically from the 15th December 2021 until 22nd December 2025.
- 7.3 There is no planning history to the contrary and the supporting evidence with this application clearly supports the use of the building as three flats as entirely independent dwellinghouses since October 2018, and more specifically from the 15th December 2021 until 22nd December 2025, a period in excess of 4 years.
- 7.4 **Given the evidence submitted in support of this application, and the guidance contained within the NPPG unless the Local Planning Authority possesses any evidence to the contrary, then this application for a Certificate of Lawful development for the three apartments within the application site should be approved.**