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Supporting Statement for Lawful Development Certificate Application for the Use of the Property as a House in Multiple Occupation At 68-70 Brecon Road, Merthyr Tydfil CF47 8NN

This statement is in support of a Lawful Development Certificate (LDC) for the use of a property known as 68-70 Brecon Road, Merthyr Tydfil CF47 8NN as a House in Multiple Occupation (HMO).

Submitted with the application is the following documents and evidence:

1. Completed Application form
2. Red Lined Location Plan
3. Block Plan
4. Copy of Planning Permission ref: P/85/0119
5. Letter to the Council from the current owner with supporting documents and appendices confirming to the HMO use not being abandoned.

6. Letters from various neighbours to planning application ref: P/23/0154 attesting to the previous HMO use taking place.
7. *Panton & Farmer v Secretary of State for the Environment, Transport & the Regions and Vale of White Horse District Council (1998)* -Case Law

With LDC applications, the onus is on the applicant to provide sufficient evidence to demonstrate, on the legal test of a balance of probability, that the use has been subsisting prior to the date of the application. The planning merits or otherwise of the proposal are not issues to be taken into account.

Section 171B of the Town and Country Planning Act 1990 states that 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. It also goes on to state that 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 4 years beginning with the date of the breach. In the case of all other breaches, the time limit is 10 years.

The test to be applied by decision makers, is based on “the balance of probability”. The Courts have held (see *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. Provided 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, the LDC should be granted.

Planning permission was granted for a change of use of the premises to that of a HMO on the 15 July 1985, ref: P/85/0119. The planning permission as implemented and was in use for a number of years (as verified by the objection letters from neighbours to application ref: P/23/0154, that was subsequently withdrawn). It then became vacant some years ago due to the death of the owner and then this continued during probate and during the time it took to facilitate the sale of the property. It was never intended that this would be for an indefinite period. The property, to all intents and purposes, can be readily used as a HMO again with little work to enable it to return to its lawful use, as demonstrated by the supporting evidence to the letter from the current owner.

It is contended that the lack of the HMO use of the property at the current time cannot be considered as constituting abandonment. The case of *Trustees of Castell- y – Mynach Estate v SoS 1984* laid down the criteria to be considered

when determining whether the residential use of an existing building has been abandoned. The four factors relevant to an assessment of abandonment are:

The physical condition of the building; the length of time for which the building has not been used; whether it had been used for any other purposes; and, the owner's intentions.

The four factors are of equal relevance. It is contended that when considering the circumstances, it is clear that the use has not been abandoned.

With regard to planning permissions, these may only be held to abandoned in very special circumstances. The courts and various appeal decisions have held that where an implemented planning permission exists for a development, as is the case with this property, rights conveyed by that permission may only be lost in any one of six circumstances as listed below:

(i) a permission is conditional upon it ceasing at a particular time, or it otherwise conditionally tied to a situation which has ceased to be.

(ii) another later permission for development is begun which renders the previous permission incapable of implementation/completion.

(iii) collapse or demolition of an old building being converted for a new use occurs, where the retention of the old structure was the justification for the permission.

(iv) the building which enjoys planning permission is demolished or otherwise destroyed.

(v) if a new chapter in planning history of the site is opened.

(vi) the building which enjoys planning permission is demolished or otherwise destroyed.

Clearly none of the above circumstances has occurred in relation to this building or its use.

It is contended by the applicant, in accordance with case law as demonstrated by the Panton case (see attached), there is a duty on a local planning authority, to issue a Certificate of Lawful Use in respect of the premises applied for where a lawful use is demonstrated, and, if the facts so require, to modify the description of that use from that described in the application. Secondly, immunity from enforcement action for material changes of use occurring before July 1, 1948, or

December 31, 1963, is not lost by the provisions relating to certificates of lawful use introduced by the Planning and Compensation Act 1991 . Such an accrued planning use right can only be lost in one of three ways by operation of law.

First, by abandonment, second, by the formation of a new planning unit and third, by way of a material change of use (whether by way of implementation of a further planning permission or otherwise). A decision-maker should determine when the breach of planning control occurred (*e.g.* before July 1, 1948, by December 31, 1963 or at a date 10 years prior to the application for the certificate of lawful use). Then, if the material change of use took place prior to one of those dates, the decision-maker should consider whether that use has been lost by operation of law in one of the four possible ways.

A use which is dormant, in the sense of being inactive at the date of the application, can be capable of being an "existing user" within the terms of section 191(1) of the 1990 Act if it has not been lost by operation of law in one of those ways.

As stated in Panton by the judge:

"It is clear that a dormant use, in this sense, can be an "existing" use for the purposes of section 191(1)..... This becomes clear when one appreciates that the LDC provisions have to be construed in the context of the enforcement provisions as a whole. Section 191 (1) enables the grant of a certificate where a use is lawful, one example of lawfulness being immunity from enforcement through the passage of time. By section 171B(3) the relevant period of time (in relation to a use other than as a single dwellinghouse) is the passage of 10 years from the date of the breach. The subsection is silent on any requirement for continuation of the use. Indeed, this approach is consistent with the fundamental principles of statutory development control in relation to material changes of use. The provisions are concerned with the carrying out of development, that is to say not use, but material change of use.

Further this approach to the term "existing", shared by the first respondent in this case, is consistent with the approach taken by the Secretary of State in relation to the former provisions. Under the previous provisions relating to established use certificates, the use had to "continued since the end of 1963" and be "subsisting at the time of the application". In a number of appeal decisions, the Secretary of State accepted that these provisions could apply to an inactive, or dormant, use, provided that it had not been abandoned."

In the light of the evidence attached and the tests applied by the courts, it is considered the application demonstrates that the use is lawful and ongoing. If

anything, it is a “dormant use” which means the use has not been abandoned, in accordance with case law. Accordingly the applicant respectfully requests that a certificate should be issued for the existing HMO use.

Yours faithfully
Jeremy Peter
Jeremy Peter MRTPI

10 January 2025