

**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**



Introduction

1. This statement is in support of a Lawful Development Certificate (LDC) for the use of a dwellinghouse known as 68-70 Brecon Road, Merthyr Tydfil CF47 8NN (“the dwellinghouse”) as a House in Multiple Occupation (HMO).
2. This is a revised application following the refusal of a previous application in May 2025 (ref: P/25/0013). That application was refused for two reasons:

1. *Having regard to the length of time the property has been vacant and a failure to demonstrate an intention to retain the use as a House of Multiple Occupancy, on balance of probability, the use is found to be abandoned and as such full planning permission would be required for the property to be used as a House of Multiple Occupancy.*
2. *The original permission for the use of the property as a House of Multiple Occupancy did not apply to the whole building, subject to this application. As such the use of the property as a House of Multiple Occupancy would be outside of the scope of the original permission*
3. This revised application excludes that part of the building that was not within the scope of the original permission so as to address the second reason for refusal. Amended plans have been included with the application to that effect.
4. As to the Council's previous finding that the use the subject of the planning permission had been '*abandoned*', the Council has, respectfully, failed to correctly apply the law. We have obtained legal advice from Counsel, Jack Parker, of Cornerstone Barristers in relation to the issues raised. As set out below, a use which has the benefit of a planning permission cannot (absent a material change in use to some other use) be '*abandoned.*' Given the Council's position that the original planning permission for the use of the dwellinghouse was lawfully implemented and there has been no material change in use of the dwellinghouse to some other use, it must follow as a matter of law that the dwellinghouse may lawfully be used for the purpose for which planning permission was granted.
5. Submitted with the application are the following documents and evidence:
 1. Completed Application form
 2. Red and Blue Line Location Plan
 3. Red and Blue Line Block Plan
 4. 68-BR-101 – Red and Blue Lined Existing Ground Floor Plan
 5. 68-BR-102 – Red Lined First Floor and Second Floor Plan
 6. 68-BR-103 – Existing Front and Side Elevations
 7. 68-BR-104 – Existing Rear and Side Elevations
 8. 1992 Plan of the Ground Floor
 9. 1992 Plans of First and Second Floors
 10. Planning Approval Reference P/85/0119

- 11.Planning Approval Reference P/86/0471
- 12.Photograph of the side of the extension, the subject of P/86/0471
- 13.Photograph of the roof of the extension, the subject of P/86/0471
- 14.2nd Photograph of the roof of the extension, the subject of P/86/0471
- 15.Letters from 16 various neighbours to planning application ref: P/23/0154 attesting to HMO being the last use.
- 16.Stockton on Tees Borough Council v Secretary of State for Communities and Local Government [2010] EWHC 1766 (Admin); [2011]J.P.L. 183

6. 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.
7. 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.

Basis of the Application

8. Planning permission was granted in 1985 for the “*change in use of dwelling to house in multiple occupation*” at “*68-70 Brecon Road, Merthyr Tydfil*” under reference P/85/0119.
9. The Council has accepted that this permission was lawfully implemented. In terms of the scope of the permission, it clearly relates to the whole of the main part of the dwellinghouse at 68-70 Brecon Road which is the subject of the application for the CLEUD. As set out in greater detail below, this application for a CLEUD excludes that part of the building which was the subject of a planning permission for an extension (Ref P/86/0471) which the Council previously did not accept was part of the HMO.
- 10.The Council is satisfied that there was no subsequent material change in use of the dwellinghouse to some other use.

11. As set out in greater detail below, a use which has the benefit of planning permission cannot, absent a material change in use to some other use, be abandoned: Stockton on Tees BC v Secretary of State for Communities and Local Government [2011] J.P.L. 183 by reference to Pioneer Aggregates Ltd v Secretary of State for the Environment [1985] A.C. 132.
12. That being the case, the planning permission granted in 1985 for the change in use of the dwellinghouse to a house in multiple occupation must as a matter of law mean that the use of the dwellinghouse for that purpose is lawful. It follows that the certificate must be granted.

Response to the Council's previous refusal of the application

13. As noted above, the Council previously refused the application for the certificate for two reasons.
14. Dealing firstly with the second reason for refusal, the Council did not previously accept that the whole of the land the subject of the application was in lawful use as an HMO.
15. The officer's report stated:

The local planning authority do not contest that the former use of the site (namely 68-70 Brecon Road) as a HMO was lawful. This was granted planning permission under planning reference P/85/0119 and there is sufficient evidence to demonstrate that the use was implemented. However, a further application in 1986 (planning reference P/86/0471) proposing an extension to 70 Brecon Road included a condition stating:

"The approval hereby conferred shall relate strictly to use of the premises for the purposes of an extension to the applicant's private quarters. It does not confer approval for any extension or enlargement of the use of the premises as a house in multiple occupation".

This would suggest that a portion of the building did not form part of the larger HMO use and as such the use of the whole of 68-70 Brecon Road as a HMO was never granted permission. It is not part of the considerations of this application to determine what portion of the building may or may not have been used as a HMO.

16. The planning permission in question (P/86/0471) was to develop land at "the rear of nos.68-70 Brecon Road" and was for the "erection of extension with pitched roof." While there are not, so far as we are aware, any plans which are available in respect of this permission, it is obvious (given that the permission refers to land at "the rear" of nos 68-70) that this permission did not relate to the main dwellinghouse but rather to the

extension which has not been constructed on land to the rear of the dwellinghouse. We have supplied photographs of the extension and it is shown outlined on the plan 68-BR-101 – Existing Red and Blue Lined Ground Floor Plan. The extension is outlined in blue. The extension is also outlined in blue on the block and location plans. The extension is therefore outside the scope of this application.

17. It will be noted from the plans that were previously included with the first application for the CLEUD that this extension was included within the application, which led to the Council's previous findings. An extract of the relevant plan is set out below:



Extract of block plan

18. As you will note from the plans included within the current application, this land has now been excluded from the application. The condition attached to P/86/0471 which required the extension to be used solely as an extension to the applicant's private quarters is clearly concerned solely with the use of the extension. It confirms that the remainder of the dwelling was in use as an HMO. Given that the land to the rear of the dwellinghouse has now been excluded from the application, there is no basis for finding that the whole of the land the subject of the application (i.e. the main dwellinghouse) is not lawfully in use as an HMO.

19.As to the first reason for refusal, the officer report into the previous application stated that:

“The local planning authority are satisfied that the property in question has previously been granted permission for use as a HMO and does not dispute that this use was implemented. However, the matter for consideration under this application is whether this use is still lawful or whether the use has been abandoned. Abandonment in planning terms refers to the loss of a use which has been lawfully undertaken in the past due to a cessation of that use and in cases of abandonment the right to resume the use is also lost. The main factors which are considered when assessing whether a use has been abandoned are set out below:

- 1. Whether the former use was a lawful use*
- 2. The length of time the property has been vacant*
- 3. Intervening uses*
- 4. The physical condition of the property and whether it is capable of accommodating its former use*
- 5. Intention of the owner*

20.It is noted that the LPA agree that the permission – P/85/0119 - has been lawfully implemented and that there has not been a material change in use of the dwellinghouse to some other use.

21.That being the case, the Council was wrong, as a matter of law, to find that the use for which permission had been granted could be abandoned.

22.In Pioneer Aggregates Ltd v Secretary of State for the Environment [1985] A.C. 132, the House of Lords held that the effect of s.75(1) of the Town and Country Planning Act 1990 meant that the concept of ‘abandonment’ did not apply where planning permission had been granted for the development in question (in that case, mineral extraction) because it was only the statute or the terms of the permission itself which could prevent the benefit of the permission enuring for the land and the persons interested therein. The Court in Pioneer identified three situations in which lawful use rights might be lost: (1) where the use in question did not have the benefit of planning permission and had been abandoned such that there was no existing use; (2) where the character of the planning unit has been altered by reason of the physical existence of a new development for which planning permission had been granted; (3) where two inconsistent permissions are granted and one is taken up, the other will not be capable of implementation.

23. In Stockton on Tees BC v Secretary of State for Communities and Local Government [2011] J.P.L. 183, the Court held that mere cessation of a use for which planning permission had been granted could not result in the lawful use rights conferred by the permission being abandoned. In that case, planning permission had been granted for a change of use of the site in question to use as a caravan site nearly 50 years previously. For many years, the site had not been used as a caravan site or for any use. However, as the permission had neither been revoked nor any subsequent permission implemented for any other use, the Inspector held that the permission was still capable of rendering lawful the site's use as a caravan site. The local authority argued that the permission had been abandoned by non-use for a significant period and that the principle in Pioneer Aggregates was of no application because a permission for a change of use was spent once that change occurred and was not thereafter capable of being implemented.

24. The Court rejected the local authority's case and upheld the Inspector's decision on the following basis:

"32. In my view the starting point has to be the general principle in Pioneer in the light of the statute. There is no obvious rule within the principle itself which Lord Scarman espouses that would support the local planning authority's arguments in this case. Its arguments do not fall within any of the three excepted classes of cases Lord Scarman recognised, nor do they fall within the factual circumstances which gave rise to the Cynon case. Everything, as it seems to me, depends for its force upon the argument which Mr Ponter addresses as to the meaning of the words "capable of being implemented". This is not the same expression as "spent". I note that there is no reference in the Act to planning permission being spent, nor is there any reference in authority, other than that to which I have been taken, to that as a matter of principle, and I accept the argument by Mr Morshead that if there were such a principle that it would have been easy as an answer to refer to it in resolving many of the cases which have otherwise troubled the courts as to the application of the abandonment of principles.

33. I accept what Mr Morshead has submitted about the context within which those words came to be said. It follows that I do not think that Lord Scarman here was speaking about a planning permission which had been granted but as to which no action had been taken to start the development to which it related.

34. That being the view which I take of the decision of the House of Lords, plainly that is binding upon me. So, too, is the decision in principle in Cynon, but this is not a case in which the principle there expressed is

directly relied on by the appellant. It does not answer the question I am posed. Insofar as the decision of Wilkie J. on this point is concerned, it is worthy of respect, though obiter, and has given me some hesitation; but I do not see how it can stand easily with the views Lord Scarman and the House expressed in Pioneer.

35. It follows that in this case, bearing in mind that it is a case in which there has been no use of the land other than that permitted by the planning permission first granted for use as a caravan site, I consider that the planning inspector was correct in law to come to the decision which he did. It follows that this appeal must be dismissed [...]"

25. The Council was therefore wrong to find in this case that the HMO use permitted by way of the planning permission had been 'abandoned' given that the permission had been lawfully implemented and there had been no material change in use to some other use.
26. Further and in any event, even if the concept of 'abandonment' is relevant (which it is not), the Council erred in its approach to that issue. Dealing with each of the factors referred to by the Council as follows:

The former use

27. Whilst agreeing that the planning permission for the HMO use was lawfully implemented, nonetheless the Council contend that this is not for all the property. Reference is made to a planning application, ref: P86/0471, in respect of a rear extension and a condition that stated the extension was not to be used as part of the HMO. This was the basis for the second reason of refusal to the previous lawful use application and is addressed above.
28. Attached as part of this application are floor plans dated July 1992 which show that the rear of the ground floor was used as a garage and workshop that was separate to the HMO. Consequently, an amended block plan and location plan are attached which exclude this area from this lawful use application. The area to which this application relates is shown in red with the rest of the land owned by the applicant shown in blue.

Period of Non-use

29. In respect of this point, the Council contend that the time that the that the property has not been used, i.e. from 1995 based on Council tax records, means that the use has been abandoned. It is contended that this reasoning is erroneous. Mere non-use from 1995 does not demonstrate abandonment.

Intervening Uses

30. As noted above, the Council agrees that planning permission has not been granted for any other changes of use since the use of property as a HMO. The Council agrees that the dwellinghouse has not been used for any other purpose, which is corroborated by evidence from neighbours.

Condition of the building

31. It is noted from the previous application delegated report that the LPA accept that the condition of the building is in a reasonable state and that it could be reoccupied and reused as a HMO with appropriate works to bring it up to standards.

Intention

32. The Council claim that no information has been submitted as to why the property has been out of use for such an extended period of time or indeed to demonstrate the intention of the owner in respect of its use. It is contended that this a wrong test to apply. Just because the use is dormant does not suggest it has been abandoned. The current owner wishes to activate the lawful use of the property as a HMO.

Conclusion

33. For all these reasons, the applicant maintains that the land the subject of the application may be lawfully used as an HMO and respectfully submits that the certificate should be issued.

Yours faithfully

Jeremy Peter

Jeremy Peter MRTPI

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