

Delegated Report

Lawful Development Certificate (Existing)

Application no: 20240206

Location 57 Lower Range Road Gravesend Kent DA12 2QL.

Proposal: Application for a Lawful Development Certificate in respect of the existing use of the dwelling house converted into three self contained flats.

Applicant: Meadow Heights Properties LTD

Site Visit N/A Desktop Assessment

Submitted Plans & Documents

- Application form;
- Letter from Gravesham Borough Council Empty Homes Team to Meadow Heights Properties dated 22 May 2023.
- Site location plan (1:1250)
- Drawing no. 02 – Existing Floor Plans.
- Drawing no. 03 – Existing Elevations.

Relevant Planning History

Reference	Description	Decision	Decision Date
20060178	Continued use of lower ground floor as residential providing a bed sit flat involving demolition of existing single storey rear extension.	Permitted	28.04.2006
20050957	Continued use of lower ground floor as residential providing a bed sit flat.	Refused	08.12.2005
20050622	Continued use of the lower ground floor as residential providing a one bedroom self-contained flat.	Refused	14.09.2005
20000435	Retention of 2 no. 1-bedroom self-contained flats.	Permitted	05.07.2001
19910773	Change of use of the ground floor shop to a screen printing studio, conversion of the first floor into a self-contained flat and alterations to the ground floor front elevation.	Permitted	10.01.1992

Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate that is considered on its facts and relevant planning law. As confirmed in national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

Legislation

The Town and Country Planning Act (1990) (as amended) Section 191: Certificate of Lawfulness of existing use or development.

Procedure for determination

In the assessment of this application, the first consideration is to establish whether there has been a breach of planning control. A breach of planning control is defined in Section 171A of the Town and Country Planning Act 1990 (as amended) as:

- carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

If there has been a breach of planning control, it is then necessary to determine whether the existing flats are lawful for planning purposes under Section 191 of the Town and Country Planning Act 1990 by virtue of the passage of time. Section 191(2) and (3) of the Town and Country Planning Act 1990 prescribes:

191(2) For the purposes of this Act uses and operations are lawful at any time if—

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

191(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

- (a) the time for taking enforcement action in respect of the failure has then expired; and*
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.*

Sections 171B(1)-(3) of the Town and Country Planning Act 1990 (as amended) set out the time periods for taking enforcement action relating to different types of unauthorised development;

- (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*
 - (a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and*
 - (b) in the case of a breach of planning control in Wales, 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 –*
 - (a) in the case of a breach of planning control in England, ten years beginning with the date of the breach, and*

(b) in the case of a breach of planning control in Wales, four years beginning with the date of the breach.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(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.

Analysis

This application is for a Lawful Development Certificate and not for a planning permission. As such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests with the applicant and the evidence submitted must be sufficiently precise and unambiguous to enable the Local Planning Authority to understand exactly what is involved. The decision must be made on the balance of probability. The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009).

The application site lies on the southern side of Lower Range Road in proximity to its junction with Denton Road and Range Road. It comprises a semi-detached building. The applicant is seeking a Lawful Development Certificate to establish that the existing use of the building as three self-contained flats is lawful in planning terms.

The submitted drawings indicate that the building comprises the following:

- Basement level flat which accommodates a living room, kitchen, bathroom and two bedrooms. (no. 57B).
- Ground floor flat which accommodates a living room, kitchen, bathroom and two bedrooms (no. 57A).
- First floor flat which accommodates a living room, kitchen, bathroom, one bedroom and a study (no. 57).

The number of flats is confirmed by the Council's Street Naming and Numbering Officer as follows:

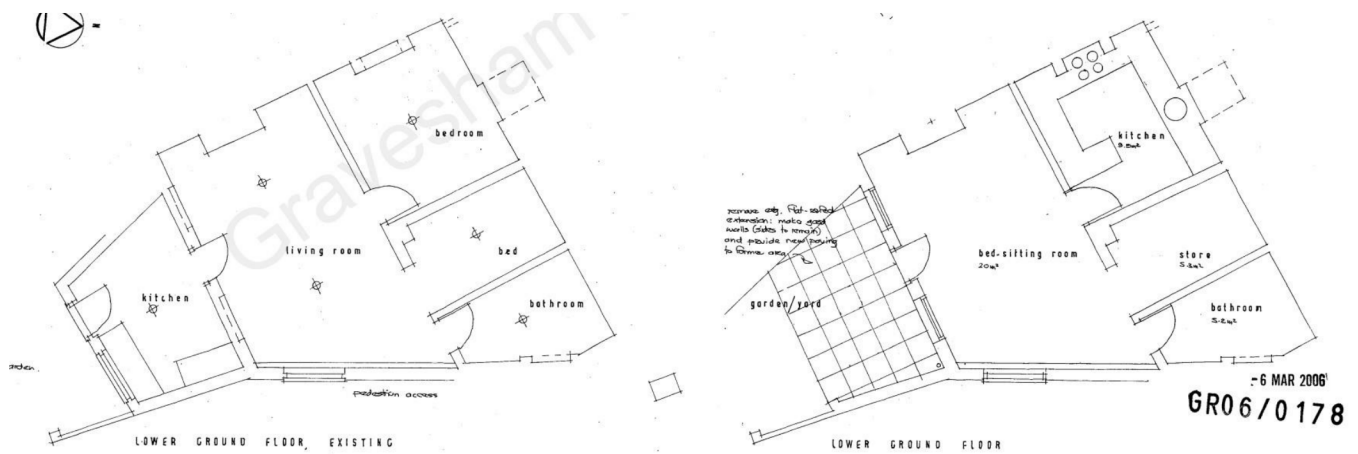
57 Lower Range Road DA12 2QL has been split into three flats since at least 2006 on the Gazetteer. (2006 is when the digital Gazetteer was created). Council Tax records (Northgate) show dates for 57A to go back to at least Oct 1998 and for 57B to 2006.

57 and 57A have their own individual front doors, and the door for 57B (lower ground floor flat) appears to be at the rear of the property as there is a post box situated on the front wall. Although there is no official Street Naming and Numbering Certificate, the addresses appear on the Royal Mail website.

The evidence relating to each flat is analysed below:

Basement level flat

The basement level flat was granted planning permission in 2006 (Gravesham planning reference 20060178). The floor plan approved as part of that application is reproduced below:



Basement flat as approved in 2006

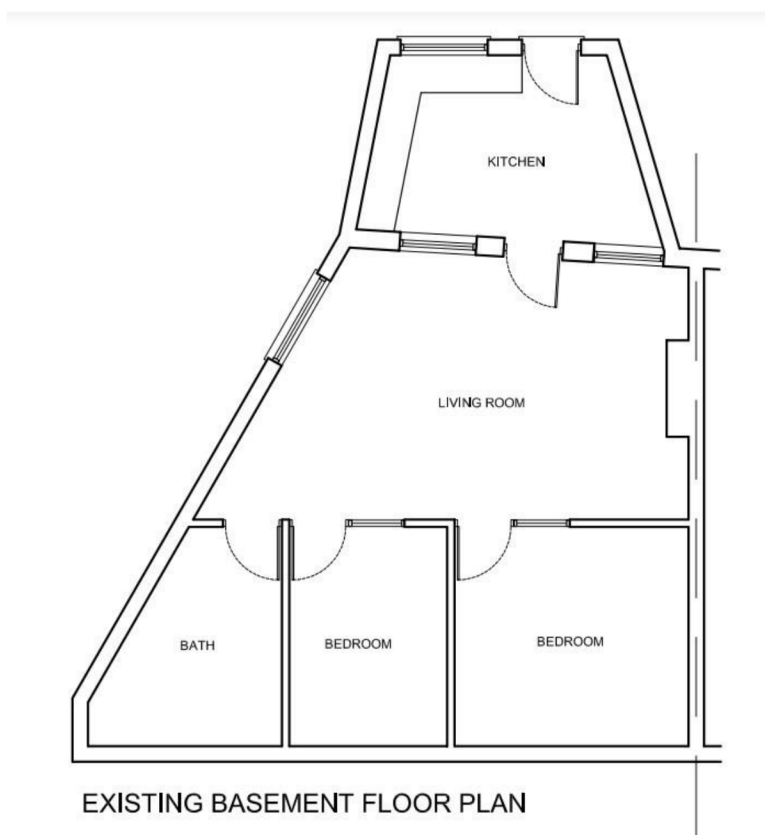
Condition 2 of planning permission 20060178 is an important consideration. This is reproduced in full below:

2. *The existing kitchen shall be demolished before the bed sitting unit hereby permitted is first brought into use.*

Reason: In order to ensure that the new bed sitting unit is constructed to a satisfactory standard.

The “existing kitchen” is clearly shown on the above existing floor plan and is shown to be removed on the above approved floor plan.

The floor plan of the basement level flat that has been submitted with the current application is shown below:



Basement flat as existing

This clearly shows that despite the requirements of condition 2 of planning permission 20060178, the kitchen remains *in situ*.

This constitutes a breach of planning control under Section 171A of the Town and Country Planning Act 1990 (as amended) as it involves “failing to comply with any condition or limitation subject to which planning permission has been granted”.

It is therefore necessary to assess whether the time period for taking enforcement action has expired. In this particular case, Sections 171B(3) of the Town and Country Planning Act 1990 (as amended) is the relevant test:

(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.*

On the balance of probability, the basement flat was occupied at the time planning permission 20060178 was granted (ie 28 April 2006). This is deduced from the following:

- The descriptions of the previous planning applications relating to this flat (Gravesham planning references 20050622 and 20050957 – see Relevant Planning History above) both refer to “continued use” of the flat. This indicates that the flat was occupied at the time of each of those applications in 2005.
- The description of planning application 20060178 also refers to “continued use” of the flat. This indicates that the flat was also occupied at the time of this application in 2006.
- Question 11 on the application form submitted with application 20060178 relates to existing uses. The answer provided includes “non-conforming flat at lower ground”

11. Existing Uses

Please state existing use(s) or, if vacant, the last use(s) of the site?..... RESIDENTIAL.....

If residential, state existing number of dwellings..... TWO ON UPPER FLOORS: NON-CONFORMING
FLAT AT LOWER GROUND.....

12 Site Area

- The Council's Street Naming and Numbering Officer has confirmed that the building has been split into three flats since at least 2006 and that Council Tax records for the basement flat (no. 57B) go back to 2006.

As such from the planning history relating to this flat, it is probable that the breach of planning control started on the date the planning permission was granted. Information from the Council's Street Naming and Numbering Officer indicates that there are Council Tax records dating back to 2006 which further suggests that the breach of planning control started at this time.

As a period of ten years has expired since the date of the breach, the non-compliance with condition 2 of planning permission 20060178 must now be considered immune from enforcement action.

Planning permission 20060178 appears to have been implemented within three years of the permission being granted as evidenced from the above analysis. Furthermore, Council Tax records indicate the following:

This flat was occupied between 16 April 2016 - 28 January 2023.

The flat was unoccupied between 29 January 2023 – 1 November 2023

The flat has then been occupied from 2 November 2023 until the present day.

The permission has been implemented within three years of being granted and has not been superseded by any subsequent permissions. It has not been revoked and the use has not been abandoned. As such the permission remains in force and the use as a self-contained residential unit appears to be lawful.

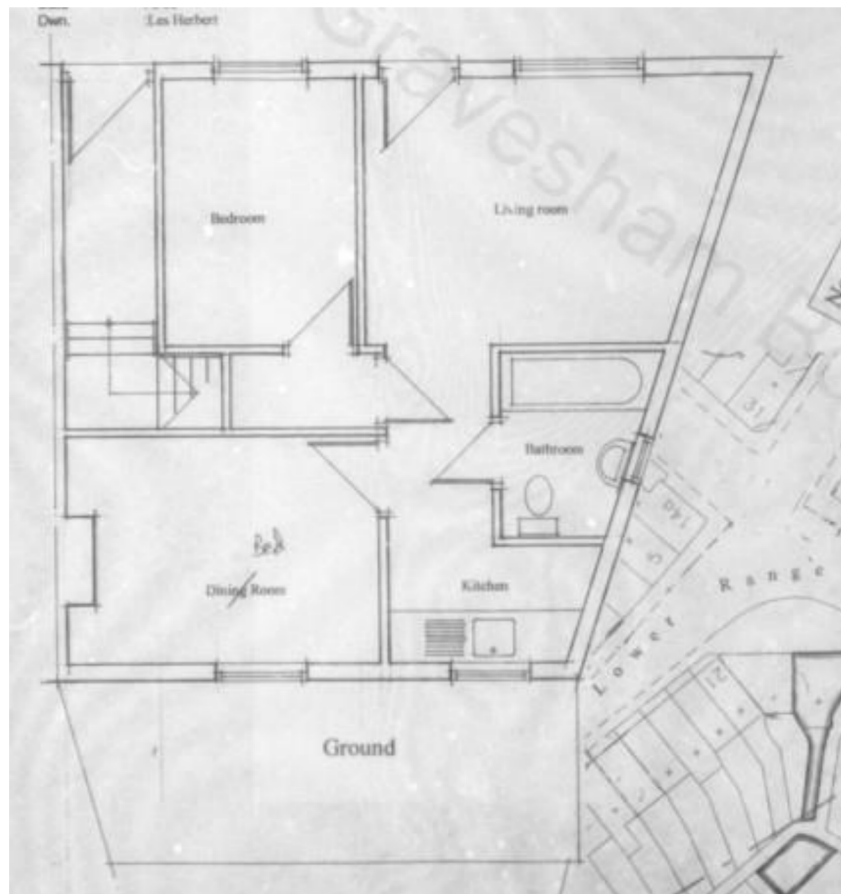
In summary,

- Although condition 2 of planning permission 20060178 has not been complied with, a period of ten years has expired since the date of the breach. As such this breach is immune from enforcement action.
- Planning permission 20060178 has been implemented within three years of being granted and has not been superseded by any subsequent permissions or revoked. Furthermore, the use has not been abandoned.
- The property is not subject to an enforcement notice.

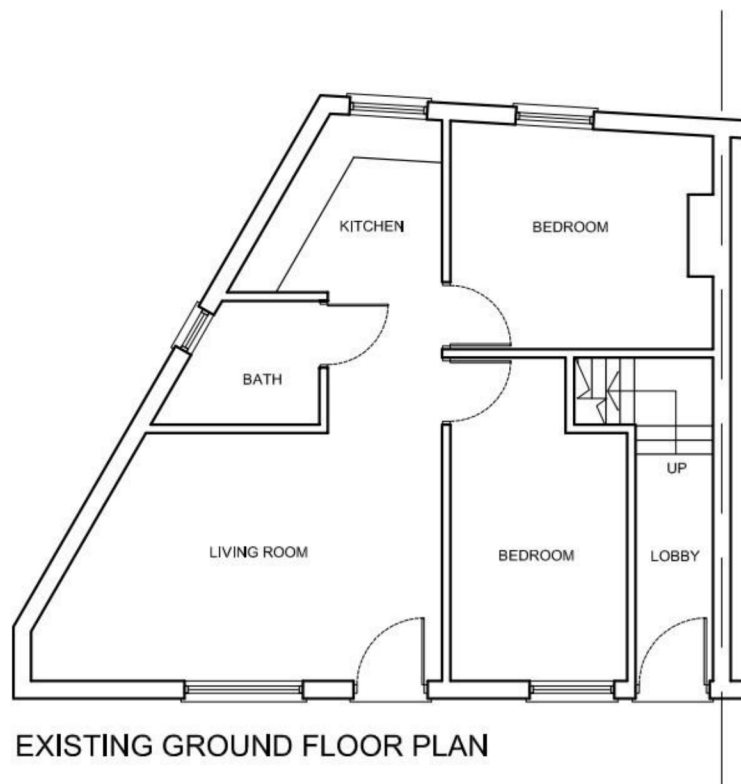
In light of the above, it is considered that the use of the basement level flat is lawful in planning terms.

Ground floor flat

It would appear that the ground floor flat was granted planning permission, together with the first floor flat, in 2001 (Gravesham planning reference 20000435). The ground floor plan approved as part of that application corresponds with that submitted as part of the current application as shown below:



Ground floor flat as approved in 2001



Ground floor flat as existing

The Council's Street Naming and Numbering Officer has confirmed that 57 Lower Range Road has been split into three flats since at least 2006 and that Council Tax records for this flat go back to at least Oct 1998. More recent Council tax records indicate that this flat has been occupied from 2 Jan 2024 until the present day. It was empty between 1 June 2018 – 1 January 2024.

It would appear that the planning permission relating to this flat was retrospective given the description provided on the decision notice (Retention of 2 no. 1-bedroom self-contained flats) and the fact that the decision does not contain a standard commencement condition.

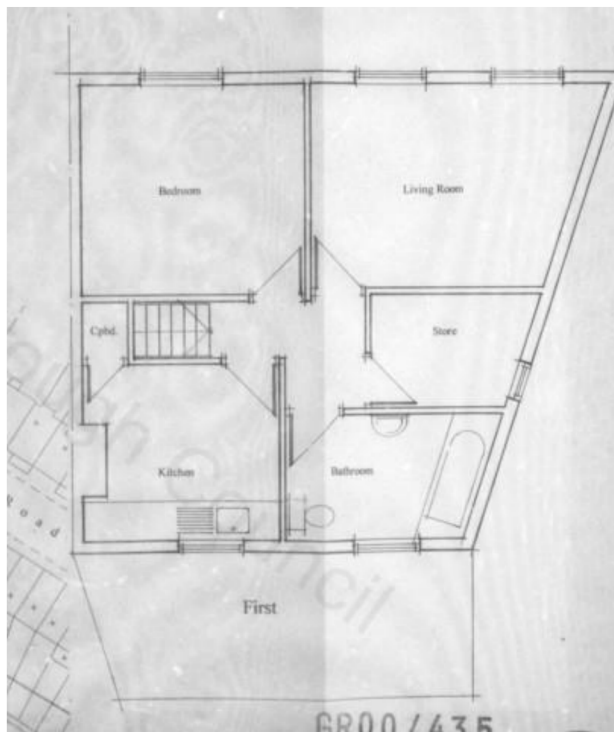
In summary,

- Planning permission 20000435 has been implemented and has not been superseded by any subsequent permissions or revoked. Furthermore, the use has not been abandoned.
- The property is not subject to an enforcement notice.

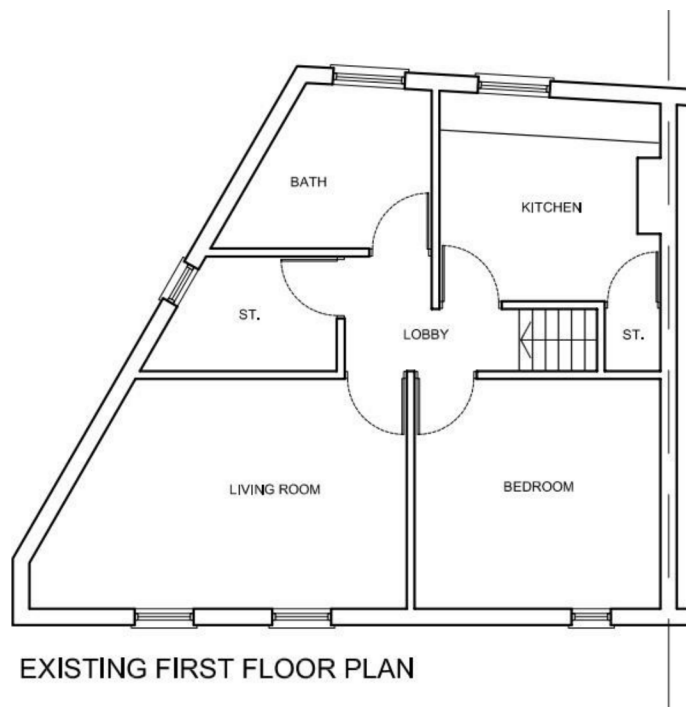
In light of the above, it is considered that the use of the ground level flat is lawful in planning terms.

First floor flat

It would appear that the first floor flat was granted planning permission, together with the ground floor flat, in 2001 (Gravesham planning reference 20000435). The first floor plan approved as part of that application corresponds with that submitted as part of the current application as shown below:



First floor flat as approved in 2001



First floor flat as existing

The Council's Street Naming and Numbering Officer has confirmed that 57 Lower Range Road has been split into three flats since at least 2006. More recent Council tax records indicate that this flat has been occupied between 1 October 2018 to the current day.

It would appear that the planning permission relating to this flat was retrospective given the description provided on the decision notice (Retention of 2 no. 1-bedroom self-contained flats) and the fact that the decision does not contain a standard commencement condition.

In summary,

- Planning permission 20000435 has been implemented and has not been superseded by any subsequent permissions or revoked. Furthermore, the use has not been abandoned.
- The property is not subject to an enforcement notice.

In light of the above, it is considered that the use of the first floor flat is lawful in planning terms.

Conclusion

Gravesham Borough Council is satisfied that sufficient evidence has been provided to conclude, that each of the three flats benefits from planning permission and that on the balance of probabilities, the use of the building as three self-contained flats is lawful in planning terms. The Borough Council is satisfied that the use of the building is exempt from enforcement action by reason of Section 171B(3) of the Town and Country Planning Act 1990, as amended. The development is therefore lawful by reason of Sections 191(2) and (3) of the Town and Country Planning Act 1990 (as amended) and a Certificate of Existing Lawful Use can be granted.

Recommendation:

GRANT the Lawful Development Certificate (existing)

INFORMATIVES

1 DECISION PLANS

For the avoidance of doubt, the forms, plans and documents upon which this decision is made comprise:

- Application form.
- Letter from Gravesham Borough Council Empty Homes Team to Meadow Heights Properties dated 22 May 2023.
- Site location plan (1:1250).
- Drawing no. 02 – Existing Floor Plans.
- Drawing no. 03 – Existing Elevations.

Case Officer:	Gary Edwards	Team Leader:	Richard Hart
Signed:		Signed:	
Dated:	16 October 2024	Dated:	5 th November 2024