

Delegated Report

Lawful Development Certificate (Existing)

Application no:	20230583
Location	36C The Hill Northfleet Gravesend Kent
Proposal:	Application for a Lawful Development Certificate in respect of the existing use of the 36C The Hill and 36C The Studio as two single self-contained units (Use Class C3)
Applicant:	Mr Robert Williams, C/O Agent
Site Visit	N/A Desktop Assessment

Preliminary and Procedural Matters

During the course of the application, it was understood that the property identified as '36C The Studio, The Hill' within this application is listed as 36D The Hill, which was the unofficial address created for the property by Street Naming and Numbering on 14.12.2022. As a result of research undertaken by the Local Planning Authority, the agent was contacted and asked to provide additional information to support the case, such as utility bills, as there were discrepancies with timeframes, and information received from the Council Tax Department indicated that insufficient time has passed in order for the development to be considered lawful. Additional information was provided by 08.08.2023 and the application shall be assessed with consideration of this additional information below.

Plans & Documents

Application Form;
 Supplementary Information – Email from agent confirming 36D The Hill is '36C The Studio';
 Supplementary Information – Supporting Statement
 Supplementary Information – Supporting Statement (Appendix 4);
 Supplementary Information – 36C The Studio – Tenancy Agreement and Check (Not viewable on public access);
 Supplementary Information – Inventory check – 36C The Studio (Not viewable on public access);
 Supplementary Information – Rental Insurance – 36C The Studio (Not viewable on public access);
 Supplementary Information – Insurance Renewal – 36C The Studio (Not viewable on public access);
 Supplementary Information – 36C The Hill – Inventory check; (Not viewable on public access);
 Supplementary Information – Utility Bill – 36C The Hill (Not viewable on public access);
 Supplementary Information – Electricity Meter Information (Not viewable on public access);
 Supplementary Information – Combined Rent Statements – 36C The Hill (Not viewable on public access);
 Supplementary Information – Landlord Statement – 36C The Studio (Not viewable on public access);
 Supplementary Information – Appeal Example (3303434) (Not viewable on public access);
 Supporting Statement (Appendix 2) (Not viewable on public access);
 Supporting Statement (Appendix 3) (Not viewable on public access);
 Affidavit (Not viewable on public access);
 Affidavit (Not viewable on public access);

Elevations – Proposed (received on 12.06.23);
Floor Plans – Proposed (received on 14.06.23);
Drawing No. DHA/30736/01 – OS Plan; and
Drawing no. DHA/30736/02 – Block Plan.

Material Consideration

- Town and Country Planning Act 1990 (as amended).

The law relating to Lawful Development Certificates can be found in Sections 191 to 193 of the Town and Country Planning Act 1990 (as amended). For the purposes of this application the relevant section is 191, being a certificate sought for an existing use.

The application seeks to determine that the existing C3 use is 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.

References to Sections 171B(1)-(3) of the Town and Country Planning Act 1990 (as amended) sets 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 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.

Relevant Planning History

Reference	Description	Decision	Decision Date
20160654	Demolition of part of rear projection of existing building and erection of part single storey and part two storey rear extension to flat 36c.	Permitted	01.09.2016
20140389	Change of use of part of shop with ancillary living accommodation at the rear into a one bedroom self-contained flat and a self-contained bedsit, installation of four new doors and a window in the side elevation and erection of a 1.8m high close boarded fence to the rear and southern side elevations.	Permitted	24.06.2014
20130885	**REVISED DESCRIPTION** Change of use of shop with ancillary living accommodation at the rear into two, one bedroom self-contained flats, alterations to ground floor front elevation; installation of new door and windows in side elevation and new front gate and railings at the front.	Refused	11.12.2013

Development Plan

As this is an application for a Lawful Development Certificate the matter is dealt with on the basis of an assessment of the available evidence; the issue of whether the use complies or not with the Development Plan does not apply in such circumstances.

Consultations, Publicity and Representations

There is no statutory requirement to consult third parties. However, the application has been advertised by individual neighbour letters to 8 properties. The consultation period expired on 14.07.23.

The Local Ward Councillors and Gravesham's Conservation Officer were also consulted.

No responses were received.

Notwithstanding the absence of any responses, as this is a lawful development certificate application, any views expressed by third parties would be irrelevant in the determination of the application.

Analysis

This application states that 36C The Hill has been used as two single self-contained units for more than 4 years, as 36C The Hill and 36C The Studio (or 36D, The Hill) respectively.

In order to determine this application for a Lawful Development Certificate and in accordance with S171B of the Town and Country Planning Act 1990 (as amended), it must be established whether or not the application site has been in C3 residential use for more than 4 consecutive years, **i.e. prior to 31.05.2019.**

Paragraph 006 of the Government Guidance on Lawful Development Certificates states 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.'

Evidence provided as part of this application

- Evidence of rental payments for 36C The Studio, The Hill, from 01/09/2018 – 31/07/2021 (**Less than 4 years**).
- Evidence of rental payments for 36C, The Hill, from – 04/08/2018 - 30/01/2023 (**More than 4 years**).
- Affidavit to declare that following the 2016 planning permission, the applicant commissioned builders to sub-divide 36C The Hill, and these separate units (36C The Hill and 36C The Studio, The Hill) have been rented out since 2018.
- Affidavit from applicant to state they had commissioned builders to sub-divide the property following the 2016 planning permission. Both separate units (36C The Hill and 36C The Studio, The Hill) have been rented out since 2018 to present date.
- Plans and (undated) photos taken after works to subdivide 36C The Hill were completed.
- Statement from Letting Agent to confirm the properties 36 The Hill and Studio 36 The Hill have been continuously let since 2018.

Additional evidence provided following the Local Planning Authority request

- 36C The Studio – Tenancy Agreement and Check.
- Inventory check – 36C The Studio.
- Rental Insurance – 36C The Studio.
- Insurance Renewal – 36C The Studio.
- 36C The Hill – Inventory check.
- Utility Bill – 36C The Hill.
- Electricity Meter Information.
- Combined Rent Statements – 36C The Hill.
- Landlord Statement – 36C The Studio.
- Appeal Example (3303434).

Evidence gathered by the Local Planning Authority

- Aerial Images demonstrate the side extension has been in situ since April 2019:

Google Image



- The Council Tax department confirmed that the commencement date for 36C The Hill is 4 August 2018 and 36D The Hill is 1 September 2019 (**insufficient time for 36D or '36C The Studio'**).
- Street Naming and Numbering confirmed 36D The Hill is an unofficial address which was created on 14/12/22 for the Council Tax Department.

In light of the additional information provided, it is considered that 36C The Hill and 36D The Hill (referred to as 36C The Studio, The Hill) has been in C3 residential use as two single self-contained units for more than 4 consecutive years.

Conclusion

The application seeks to confirm that the use of 36C The Hill and 36D The Hill (referred to as 36C The Studio, The Hill), as two single self-contained residential C3 units is lawful. The applicant has demonstrated that in the balance of probabilities, the flat has been occupied as two single self-contained residential C3 units for at least the last four years prior to the application being made and is therefore lawful due to the passage of time.

Recommendation:

Approve Certificate of Lawfulness – Existing Development

Recommendation: <u>Grant</u> Lawful Development Certificate
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Case Officer:	Mrs Lucy Hankin	Team Leader:	Richard Hart
Signed:	L Hankin	Signed:	<i>R Hart</i>
Dated:	8 th August 2023	Dated:	9th August 2023