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**16/01120/CLD**  
**Harper Home, 29-31 Fordbridge Road, Ashford, TW15 2TB**

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# Planning Committee

19 October 2016



<b>Application Nos.</b>	16/01120/CLD		
<b>Site Address</b>	Harper Home, 29 – 31 Fordbridge Road, Ashford		
<b>Proposal</b>	<p>Application for a Certificate of Lawfulness for the existing use as 20 no. self-contained residential flats, including 2 units within a single storey building located to the rear of site.</p> <p>As shown on plan nos.' EB/1608031; EB/1608031/E; EB/1608031/1-2; EB/1608031/2-8; EB/1608031/9-18; EB/1608031/20-21 received 30 September 2016, site location plan and block plan received 15 July 2016,</p>		
<b>Applicant</b>	Knowle Green Estates Ltd		
<b>Ward</b>	Ashford Town		
<b>Call in details</b>	N/A		
<b>Case Officer</b>	Paul Tomson		
<b>Application Dates</b>	Valid: 11.07.2016	Expiry: 05.09.2016	Target: Over 8 weeks
<b>Executive Summary</b>	<p>This application is for a Certificate of Lawfulness for an existing use of the site for 20 no. self-contained residential flats including the 2 units located within the existing single storey building to the rear of the site. The applicant claims that the site has been used for this particular purpose (without planning permission) for more than 4 years and is therefore lawful and immune from any enforcement action being taken.</p> <p>This application has to be assessed on the basis of “balance of probability”. It is important to note that this is not a planning application and the Council cannot therefore consider the planning merits of the submission. The applicant has submitted evidence with the application and this, together with the Council’s evidence, indicates that, on the “balance of probability”, the use has occurred for more than 4 years and is lawful. Accordingly, it is recommended that a Certificate of Lawfulness is granted.</p>		
<b>Recommended Decision</b>	That a Certificate of Lawfulness is granted		

## MAIN REPORT

### 1. Relevant Planning History

99/00680/FUL	Change of use from residential care home to 10 no. self-contained flats for homeless persons comprising 2 no. 1-bedroom, 6 no. 2-bedroom and 2 no. 3-bedroom flats. Provision of 17 parking spaces	Refused 02/02/2000
00/00127/FUL	Change of use from residential care home to 10 no. self-contained flats for homeless persons comprising 2 no. 1-bedroom, 6 no. 2-bedroom and 2 no. 3-bedroom flats. Provision of 10 parking spaces.  (Officer Note: this scheme was not implemented)	Appeal Against Non-deter- mination Allowed 02/11/2000
00/00840/FUL	Change of use of premises from elderly persons care home to a hostel for the homeless together with ancillary parking spaces at the front and rear for 11 cars.	Refused 31/01/2001 Appeal Allowed 07/08/2001

### 2. Description of Current Proposal

- 2.1 The application relates to Harper Home, 29 – 31 Fordbridge Road in Ashford, which is a site located on the corner of Fordbridge Road and Chesterfield Road. It comprises a part 2-storey/part 2 ½ storey building fronting Fordbridge Road. It also includes a single storey building at the western end of the site, to the rear of 2A and 2 Chesterfield Road. There is a parking area at the front of the site. There is also a vehicular access off Chesterfield Road. The surrounding area is residential in character.
- 2.2 In 2001 planning permission was granted on appeal for the change of use from an elderly care home to a hostel for the homeless (00/00840/FUL). A condition was imposed on that planning permission restricting the number of residents to a maximum of 51. Whilst the site continues to be occupied by homeless persons, the internal layout has been altered over the last 15 years to make the individual accommodation units more self-contained and the facilities associated with a hostel use have been reduced. Furthermore, 2 self-contained residential units now exist in the single storey building located at the rear of the site. Consequently, the site now comprises 20 self-contained residential units and none of the hostel facilities (e.g. shared rooms) exist.
- 2.3 This application is seeking a Certificate of Lawfulness for the existing use as 20 no. self-contained residential flats, including 2 units within the single storey building at the rear of the site. The applicant is stating that the site has been used for this particular purpose for more than 4 years, and is therefore

immune from planning enforcement action (i.e. that it is effectively lawful). This is different to a planning application where the planning merits of a scheme are assessed. In considering an application for Certificate of Lawfulness, the Local Planning Authority has to have regard to the evidence submitted by the applicant, and any other evidence, and make a decision based on “the balance of probabilities” whether they consider the use has been in existence for more than 4 years or not.

- 2.4 It is relevant to note that the applicant is Knowle Green Estates Ltd, which is the commercial company of Spelthorne Borough Council. Due to the Council’s interest in the site it is necessary to report this application to the Planning Committee for a decision.
- 2.5 Since the application was first submitted, the applicant has provided more accurate floor plans which are drawn to scale and show each of the 20 units on the site. In addition, elevation drawings and a site survey drawing have been submitted. Neighbouring properties have been notified of these new drawings and any further letters of representation will be reported orally at the meeting.

**3. Consultations**

3.1 The following table shows those bodies consulted and their response.

Consultee	Comment
Head of Legal Services	Considers that a Certificate of Lawfulness should be issued.

**4. Public Consultation**

4.1 The Council has written to a total of 15 neighbouring properties notifying them of the application and inviting them to write in if they have any evidence which supports or contradicts the submission. 5 letters have been received (2 from 2a Chesterfield Road, 2 from 37 Fordbridge Road, and 1 from 2 Chesterfield Road). Issues raised include:

- The unauthorised use of the site was previously reported to Spelthorne Council but no action has been taken.
- The sheds at the rear of the site have only been used in the last 2 -3 years. A TV aerial that was unsightly from a neighbour’s garden was put up approximately 2 ½ years ago.
- Concern about the impact on parking in the area.
- Concern about the poor and unsightly condition of the site.

**5. Planning Considerations and Recommendation**

Evidence submitted up Front with the Application

5.1 As mentioned above, the applicant has submitted a number of plans and documents as part of their evidence in support of the application. This is summarised as follows:

1. A full set of scaled floor plans showing the location of each of the 20 units. The plans indicate that all of the units are separate means of accommodation and that there are not communal living facilities within the buildings. These plans supersede earlier hand drawn floor plans that were originally submitted with the application.
2. Elevation survey drawings of the main building and the single storey building at the rear of the site.
3. A site survey drawing.
4. A number of water tank diagrams. The applicant has confirmed that these are to demonstrate that each unit has its own hot water system.
5. A British Gas letter dated 07 March 2012 addressed to Suite 18 at the site. It indicates that this particular unit has been in existence for more than 4 years.
6. A Spelthorne Council Tax list of names and addresses at the site. The list indicates that Council Tax payments are billed to the individual units and the people residing in them. The liable dates go back as far as 2009.
7. 2 no. letters from Spelthorne Council's Environmental Health section to Mr Khan, the previous owner of the site. The first letter dated 18 October 2011 states that new drawings should be provided to show the new layout of the premises including identifying each letting (i.e. each unit). The second letter dated 13 December 2011 refers to some outstanding works required in relation to 3 of the units and other areas of the building.
8. A Counsel Opinion dated 12 June 2006. It states that it should be read in conjunction with earlier Advice given in May 2016 and gives the view that a Grant of Certificate should be granted.
9. Other associated documentation, including a copy of a training course certificate for Mr Khan (previous owner) dated 16 January 2007.

#### Other Evidence

- 5.2 The comments from the third party representations are noted. Whilst one of the letters states that the units in the single storey building at the rear of the site were only used in the last 2 – 3 years, no evidence has been submitted to demonstrate this. A planning enforcement investigation carried out in February 2014 revealed that these particular units were already in existence at that time. A subsequent email from the owner's planning agent to the planning enforcement officer states that these units were present in 2009 when the owner starting paying Council Tax for them. Indeed, the submitted Council Tax records show that both of these units were liable for payments since at least from 2011. A separate Environmental Health record from August 2011 shows that a complaint was made from a member of the public about the outbuildings at the rear being lived-in at that time, which is more than 4 years ago.

- 5.3 When planning permission was originally granted in 2001 for the hostel, a number of conditions were imposed restricting how the hostel was used and maintained. For example, there was a condition preventing any changes to the internal layout and use of rooms, plus a condition requiring car parking to be provided at the front and rear of the site. Whilst it is now clear that some of these conditions were breached by the previous owner, they are no longer enforceable. The previous hostel use has long since ceased, the conditions have therefore lapsed and are not applicable to the new use of the site as 20 self-contained flats.

#### Site Visit

- 5.4 The case officer's site visit was carried out on the 04 October 2016 and confirmed that the property comprises 20 flats. Each unit is accessed via its own lockable entrance door. They are fully self-contained and have their own kitchenettes and bathrooms. They also have their own electric meter. Even the 2 no. units in the single storey building at the rear of the site are fully self-contained. The 2 units on the second floor were in the process of being renovated. There are no dormitories or other communal or shared facilities that would normally be associated with a hostel.

#### Comments from Legal Services

- 5.5 The Council's Legal Services were consulted on the application. They have concluded that the Council should grant the Certificate of Lawfulness, as there is sufficient evidence submitted by the applicant to show, on the balance of probabilities, that the change of use has existed for more than 4 years and is therefore lawful. They have made the following comments:

*"The previous use of the hotel was as a hostel (this is Sui Generis). It is now in C3 usage [dwellings]. It is likely that the change came about circa 2010. By that time, each of the self-contained flats therein was separately rated. There is evidence to show this. I have not been shown any evidence to the contrary. The burden of proof is on the applicant and it is on a balance of probabilities. Accordingly the evidential burden has been discharged. If the four year time limit applies, a certificate must be issued."*

#### Conclusion

- 5.6 From the evidence submitted by the applicant, it is considered that the change of use to 20 self-contained residential units took place more than 4 years before the receipt of the current application. The submitted Council Tax records clearly demonstrate that each of the 20 units have been individually billed and that the payment records go back more than 4 years. Whilst the comments from third party representations are noted, the evidence from the Council's Planning Enforcement and Environmental Health records show that the single storey building at the rear of the site was used for residential purposes more than 4 years ago (indeed the Council Tax records confirm this). The Council's Legal Services consider that the Certificate of Lawfulness should be issued.

5.7 It is therefore considered, on the balance of probability, that the use of the site for 20 no. self-contained residential units has been in existence for more than 4 years and is therefore lawful.

**6. Recommendation**

6.1 That the Certificate of Lawfulness is granted

Reason

6.2 The Council is satisfied that the use as 20 no. self contained flats including the 2 units in the building at the rear of the site has been in existence for more than 4 years preceding the date of the application. Accordingly the development described in the Schedule above is lawful under Section 171B of the Town and Country Planning Act 1990.