



**USE AS FOUR SELF CONTAINED
FLATS**

Unit 1 Seddul Bahr

SUPPORTING STATEMENT



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1.0 INTRODUCTION

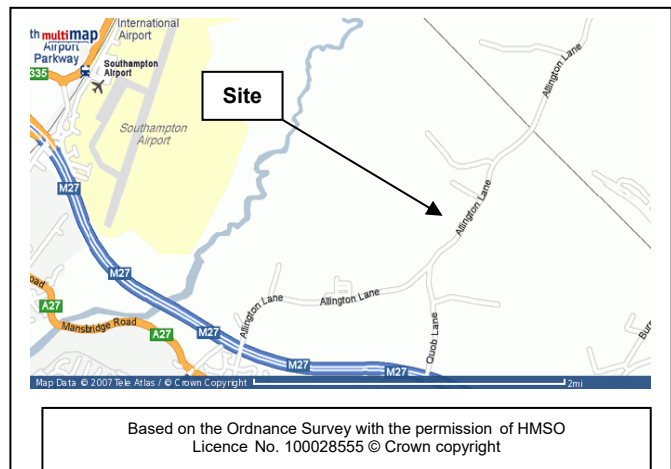
1.1 Southern Planning Practice have been instructed by JR Properties to submit a certificate of lawful use for the use of unit 1 Seddul Bahr as 4 self contained flats. Such use having taken place continually for in-excess of four years prior to the submission of this application.

1.2 The documents accompanying the application are as follows: -

- This statement
- Site Location plan
- Floorplans

2.0 THE SITE AND SURROUNDINGS

2.1 The site is located on the west side of Allington Lane about halfway between the railway line to the north and the junction with Quob Lane to the south. Although this is a countryside area it is characterised by many varied uses, including agricultural, residential, and industrial buildings. The long established Roddington Forge site, immediately to the north is a scrap



yard with open storage, vehicle repairs and a nightclub. The aerial photograph below has the site at its centre. Although slightly out of date, it shows the general character of the area and the extent of buildings and open storage.



2.2 The whole site is basically rectangular, but is reduced to about half its width at the front by the curtilage of Little Acre. It totals 1.1 hectares. The site is mixed industrial and storage use. It contains a variety of small buildings; areas of car parking; and open storage of building materials and vehicles.

- 2.3** Unit 1 has been used for residential purposes for live/work purposes for number of years. An application for a lawful development certificate was permitted by the council in 2011 (U/11/68398) and a subsequent planning permission. (ref. F/11/68468) was granted for the redevelopment as a live work unit.

3.0 GROUNDS UNDER WHICH A CERTIFICATE IS SOUGHT

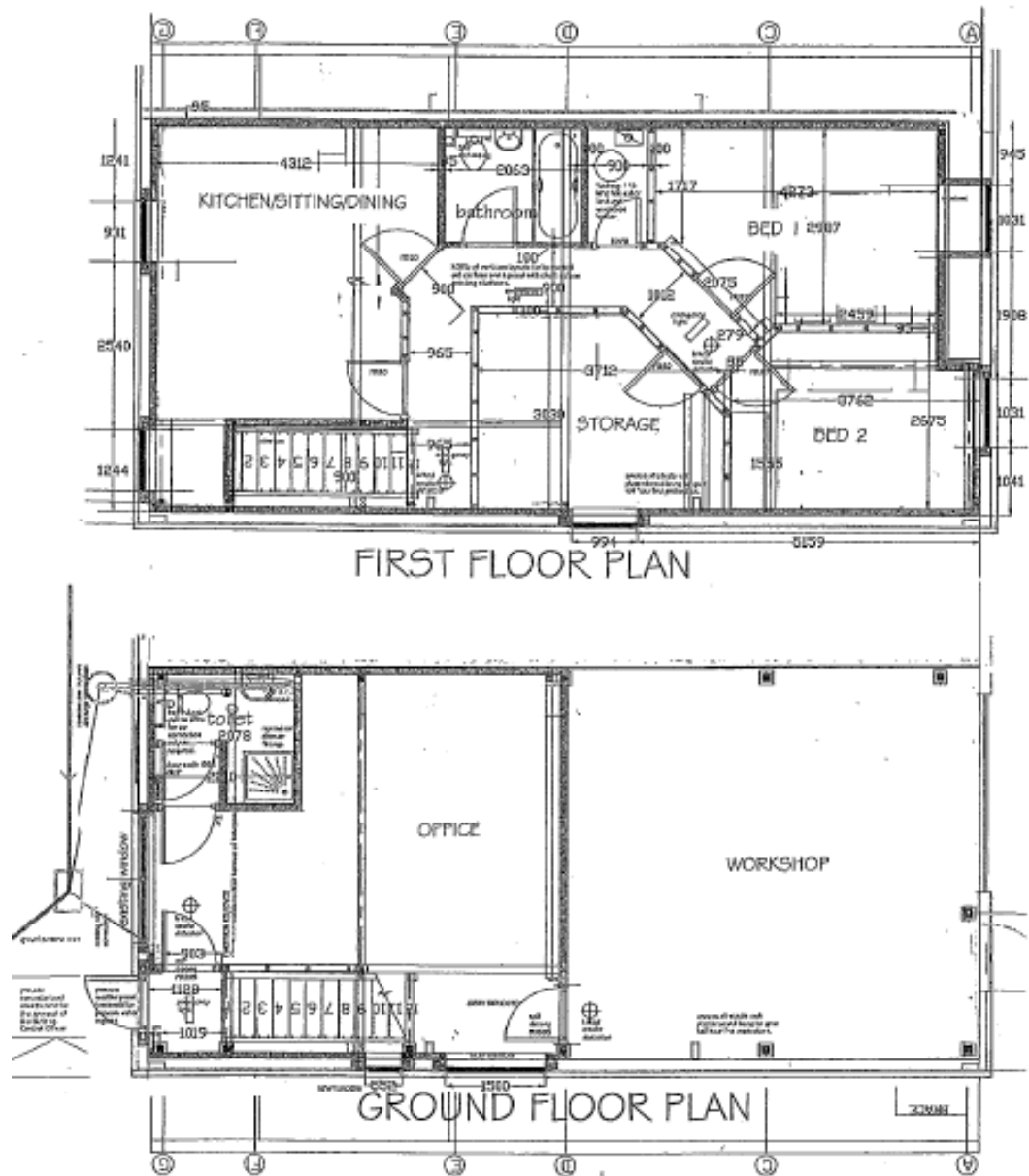
- 3.1** Section 191 of the Town and Country Planning Act 1990 (as substituted by the Planning and Compensation Act 1991) provides for any person wishing to ascertain whether an existing use of buildings or land is lawful to submit an application for a Certificate of Lawfulness of an existing use.
- 3.2** An LDC application must relate to a specific existing or proposed use, operation or activity. The exact terms of the LDC and the development specified will provide a datum against which any subsequent change may need to be assessed.
- 3.3** An LDC under s.191 is not the equivalent, in law, of a planning permission. Its purpose is to enable owners and others to ascertain whether specific uses, operations or other activities are lawful. Lawfulness is equated with immunity from enforcement action.
- 3.4** The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding an LDC application or appeal.
- 3.5** This application is submitted under section 191(1) on the grounds that the 4 flats have been used as a separate dwelling for a continuous period of at least four years prior to the submission of this application and the use has continued uninterrupted.

4.0 HISTORY AND USE

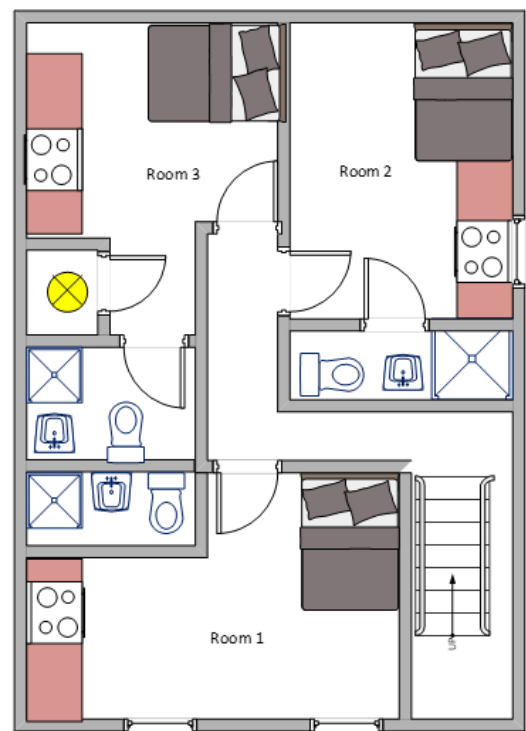
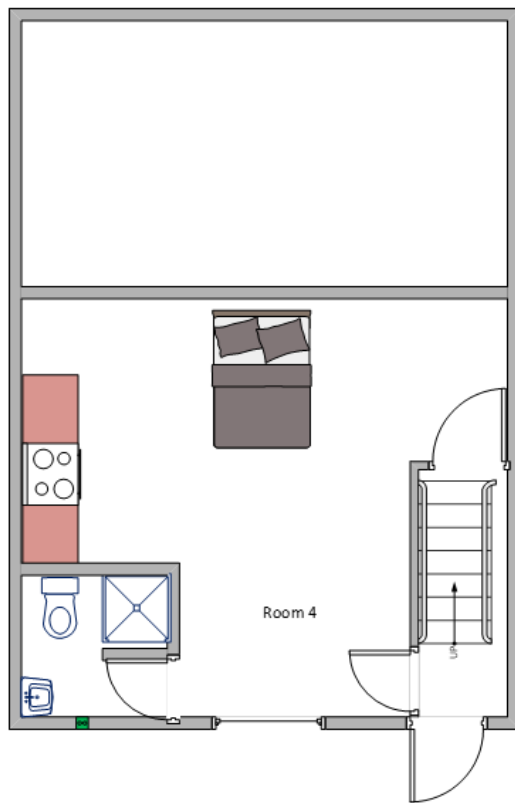
4.1 The planning history and use is as follows:

App no.	Development	Decision and Date
F/08/64183	Retrospective retention of 2.4m high palisade perimeter fencing	Permission 13/01/09
U/10/67280	Application for a Lawful Development Certificate for an existing use for the retail & storage of reclaimed & new roofing supplies (B8)	Permission 26/07/10
F/10/67282	Retention of 6 no. Industrial units for B1, B2, B8 use & taxi office, retention of restroom/toilet block. Erection of 3no. Industrial units for B1, B2, B8 use with car parking & landscaping (amended design)	Permission 25/08/10
F/10/67367	Erection of detached B1/B2/B8 industrial building comprising 7 units, total floor area 530sqm, following demolition of 5no. existing units and smaller outbuildings	Permission 25/08/10
U/11/68398	Certificate of lawfulness for the use of unit 1 as a live/work unit	Permission 22/03/11
F/11/68468	Construction of 1no. live/work unit following demolition of existing industrial unit	Permission 16/06/11
F/11/69339	Use of building, portacabin & site for the storage & ancillary sale of building materials	Withdrawn
F/12/70779	Erection of 7no. storage units (use class B8) with associated car parking	Permission
F/13/7264	Retention of partially constructed industrial building used for B8 storage & MOT testing centre	Withdrawn
F/13/7/73067	Retention of industrial building to be used as MOT centre (1no. unit) & B2 purposes (2no. units)	Permission
F/14/73949	Erection of 13no. industrial units including use of 1no. unit as trade counter for B8 & B2 purposes	Permission
X/14/74511	Minor Material Amendment for internal changes	Appeal against non determination - dismissed
F/15/76840	Retention of live work unit in revised form	Permission
X/16/78217	Variation of condition 1 of planning application F/15/76840 to allow alterations to internal layout	Permission

4.2 In 2011 permission was granted for a live work unit. From 2011 various iterations were undertaken to the internal layout of the live work unit. This culminated in a retrospective application (X/16/78217) to retain the layout. The changes related to the alterations on the first floor to combine the two rear rooms (indicated as storage), to be used as a kitchen/rest room and utilise the envisaged kitchen area as storage. This is shown below: -



- 4.3** In June 2017 internal alterations were undertaken to form 4 self contained units each capable of independent living and containing a bed, cooking facilities and a toilet.
- 4.4** The 4 self contained units have been continuously occupied since they were converted in June 2017.
- 4.5** Subsequently in June 2017 the internal layout was altered to the one shown below.



5.0 SUPPORTING EVIDENCE

5.1 The following evidence has been submitted in support of the Lawful Development Certificate: -

- Original floor plan (**appendix 1**)
- Current floor plan (**appendix 2**)

6.0 LEGAL POSITION

6.1 Under section 172B(2) of the Act, the time limit for enforcement action in respect of the use of any building as a single dwellinghouse is 4 years. The Court of Appeal judgment in *FSS v Arun DC & Brown* [2006] EWCA Civ 1172 established that this applies whether the breach of planning control consisted of development carried out without planning permission or a breach of a condition of a planning permission.

6.2 There is no statutory definition of a dwellinghouse, but the case of *Gravesham BC v SSE* [1982] P&CR 142 provides a description which has become commonly used. It is argued in this case that the 4 units afford the facilities required for day-to-day private domestic existence.

6.3 The deputy Judge in *Panton and Farmer v S of S* held that, if immunity from enforcement is acquired in respect of a material change of use, that immunity could only be lost by abandonment, by the formation of a new planning unit or by a further material change of use. In this case: -

- The use is still in existence and is capable of day to day private existence.
- There has been no new planning unit created.
- There has been no subsequent change of use.

6.4 In view of the respective positions it is necessary to reach a conclusion on whether the building and the associated land have been used as an independent residential unit, such that a material change of use has occurred and, if so, whether the appellant can demonstrate with sufficient clarity that the necessary period of continuous use has occurred such that it has become lawful due to the passage of time.

ARGUMENT

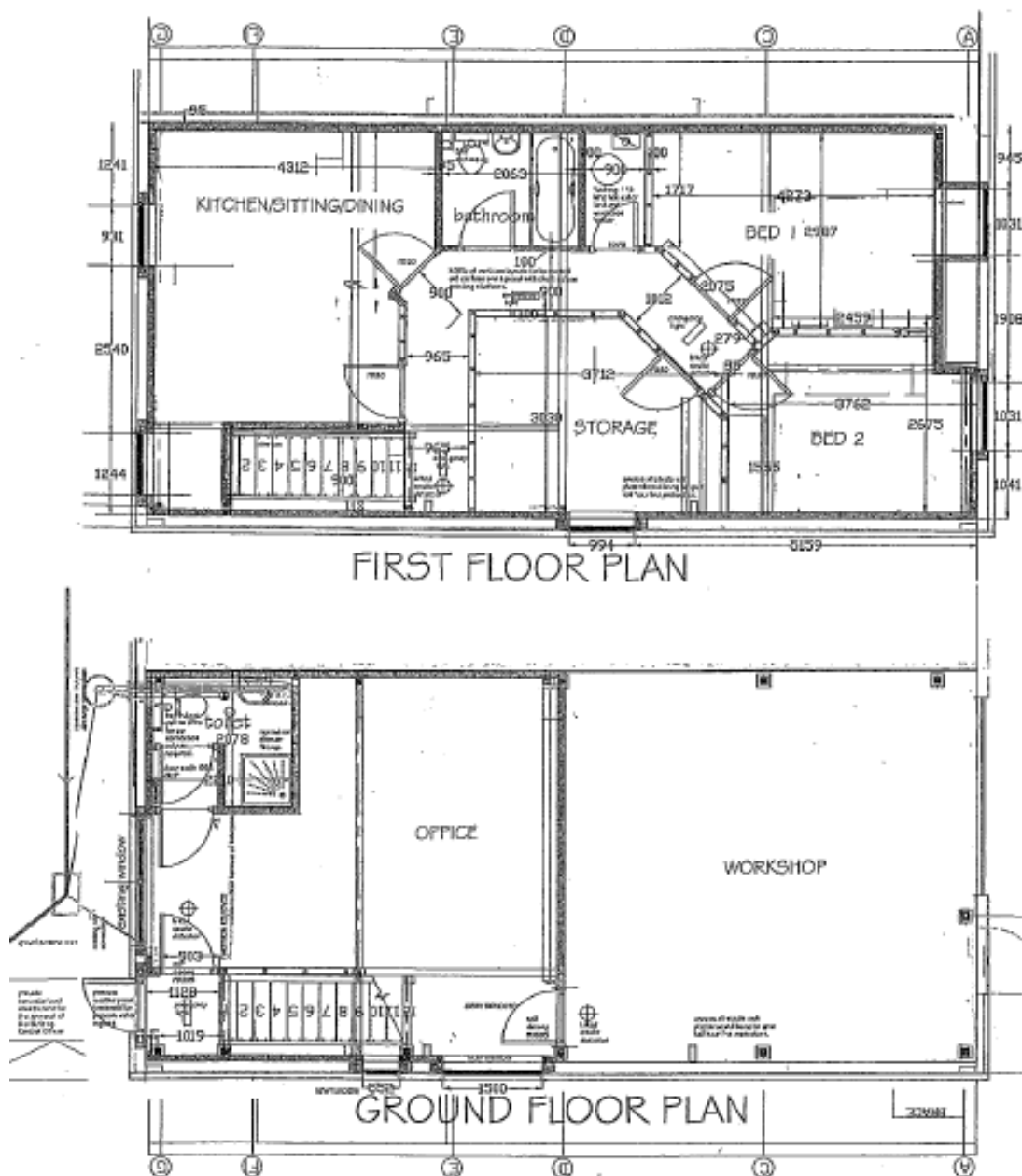
- 7.0** The use as a live work unit commenced in June 2017 when the conversion works to form the 4 self contained residential units commenced.
- 7.1** The units have been continuously occupied since that date by a variety of tenants.
- 7.2** It is argued that the conversion work in July 2017 commenced the change of use and there has been continuous self contained residential use since that date.
- 7.3** It is argued therefore that there has been at least 4 years of continuous occupation of the cabin which has all the facilities for day to day living. There has been no subsequent planning unit created or material change of use since 2017.
- 7.4** It is argued therefore that unit 1 has been used for residential purposes for the last 4 years prior to the submission of this application and the use is lawful.

8.0 CONCLUSION

8.1 The use as 4 separate residential dwellings has operated continuously for in excess of 4 years prior to the submission of this application.

8.2 A Certificate of Lawfulness of an existing use should therefore be granted.

Appendix 1-Approved floor plan



Appendix 2 – Current floor plan

