

WELWYN HATFIELD COUNCIL – DEVELOPMENT CONTROL
DELEGATED REPORT

APPLICATION No:	S6/2009/215/LU
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NOTATION:

The site lies within Hatfield as designated in the Welwyn Hatfield District Plan 2005.

DESCRIPTION OF SITE:

The application site comprises an attached building which is orientated to the public highway known as Birchwood Avenue. The site contains an attached 2 storey dwelling which has the appearance of a residential building when viewed from the street scene. The terrace is bound by an attached dwelling on the western elevation and a detached dwelling to the east of the site. Signage lies on the front of the dwelling indicating the use of the building as a dentist surgery.

DESCRIPTION OF PROPOSAL:

The application is for a certificate of lawfulness for :
Retention of Existing Building known as '7 Birchwood Avenue' for use as a D1 Use (Dental Surgery)

PLANNING HISTORY:

S6/2008/2007/FP- Change of use of No.5 from two storey residential dwelling to ground floor dental surgery to be used in conjunction with existing dental surgery at No.7 including erection of single storey rear extension for proposed treatment rooms, and formation of 2, 1 bed flats in existing 1st floor accommodation at No.5 & No.7 along with associated vehicular crossover for new parking area -Withdrawn (October 2008)

DISCUSSION:

The application concerns a building which is in the village settlement of Hatfield. The external appearance of the building is that of an attached dwelling with a pitched gabled roof. The property has a ground floor door to the front elevation and contains a reception area, waiting room and kitchen on the ground floor of the building. On the first floor of the building there lies consultation rooms, x-ray room and sterilization rooms.

The relevant period for immunity from enforcement.

Section 171B(3) of the Town and Country Planning Act set out the requirements for immunity for other uses which states that:

'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.'

The issue therefore is whether there has been a breach of planning control by use of the application building as a D1 use, if so, whether the breach has continued without

material interruption throughout a period exceeding 10 years before the date of this application, that is before 30/1/2009. The burden of proof in such an application lies with the applicant and the relevant test of evidence is the balance of probability.

The evidence of the applicant

This comprises of:

- Letter from NHS dental services
- Insurance documents
- Receipts for maintenance work
- Bills and Invoices for Dental products and equipment
- Letter from patients of the dental surgery
- Letter from Accountancy firm representing the surgery for 10 years.

Use as a D1 use, Dental Surgery

The applicant states that *the building has been used as a Dental Surgery from about 1951. I purchased the business and the property on 31 July 1991 but have been unable to locate any papers relating to planning use.*

A floor plan has been provided indicating the use of rooms within the building. The ground floor of the building includes a kitchen, reception desk and waiting room. The stair case leads to the first floor level of the building which contains an x-ray room, two treatment rooms, sterilization room and water closet. Signage lies on the front of the dwelling indicating the use of the building as a dentist surgery.

With these facilities, it is considered that the building is in use as a dentist surgery. An inspection of the site affirmed that the use of the building in fact is internally fitted as described on the floor plans and does not appear to be used for habitual residential purposes, rather a dentist surgery.

The appearance of the site is of a residential dwelling, however it is evident on inspection that the building has been converted to a dentist surgery. The matter of relevance in this case is whether it has been used as a D1 – dentist surgery use for the requisite period to deem it a lawful use.

Appraisal of the Evidence of Use

A range of documentary evidence has been submitted in respects to the use of the building over time. The core of the documentary evidence is the range of bills and invoices, letters from the NHS, letters from patients and the surgery's accountancy firm.

The application was made on the 31 January 2009, therefore, evidence demonstrating to the operation of the dental surgery from 31 January 1999 is required to comply with the immunity period under Section 171B(3).

The evidence provided by the applicant ranges from 1994– 2009, and provides at least 1, but on average 2 documents for every year within this period. Given that the applicant seeks to prove that the building has been operating in excess of 10 years, of particular importance is evidence dated 10 years prior (ie. the beginning of the period). In this regard, the applicant has submitted sales invoices for dental products from health care supplier/s on 12.09.2007 and 26.11.1998 and 27.07.1999. In

addition, an invoice for the maintenance and service of an x-ray machine on 26.11.1998.

Amongst other invoices spread across the 10 year period are 2 letters from patients of the surgery who have attested to attending the surgery. Of particular weighting is a letter from an elected member of the Council who states that he has gained treatment at the dentist surgery since 1991 when the surgery was taken over into the ownership of the applicant.

The most credible documentation appears to be from the NHS dental service who has stated in a letter dated 26 January 2009 that:

"In support of your planning application for 7 Birchwood Avenue, Hatfield (AL10 OPL), I am writing to confirm that our records show that you have a continuous NHS dental contract at this address since 18th August 1997. We have acted as processing and paying agents for NHS dental service carried out by yourself at the above address. Following some changes in the administrative role, from 1st April 2006 your contract has been managed locally by the Primary care Trust. However NHS Dental Services retains it's processing and paying role."

In support of the above letter and to provide a link between the operation of the surgery between August 1997 and April 2006, the applicant has provided a letter from the NHS Primary Care Trust who has noted the following:

"I am writing to confirm that Dr Dipak Patel has held an NHS contract with the Primary Care Trust since 1 April 2006 at the above address".

It is considered that the applicant has submitted a range of evidence of a credible nature which demonstrates that the surgery could have been continually operated over the prescribed 10 year period. It is therefore considered that on the absence of contradictory evidence that it is probable that the dentist surgery has been used for a continuous period of 10 years prior to the lodgement of the Lawful Use application.

Conclusions

The decision is based on the basis of the evidence now available and on the balance of probabilities. On this basis it is concluded that the building is capable of being used as a D1 use, Dentist Surgery. It is also concluded that the use of the building as a D1 use, Dentist Surgery probably did commence more than 10 years before the date of the LDC application and continued without material interruption to the date of that application. Taking into account the evidence submitted it is recommended a Certificate of Lawfulness is therefore granted.

RECOMMENDATION

It is therefore recommended that a Certificate of Lawfulness be granted .

DRAWING NUMBERS: Site Location Plan 1:1250 received and date stamped 30 January 2009 and floor plan received and date stamped 12 March 2009.

Signature of author..... Date.....



WELWYN HATFIELD COUNCIL

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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191 AND 192
(as amended by section 10 of the Planning and Compensation Act 1991)
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER
1995
ARTICLE 24
CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

PLANNING DECISION NOTICE – APPROVAL

For Planning Application S6/2009/215/LU

**Mr Dipak Patel
7 Birchwood Avenue
Hatfield
HERTS AL8 0PL**

**For : Mr Dipak Patel
7 Birchwood Avenue
Hatfield
HERTS AL8 0PL**

The Welwyn Hatfield Council hereby certify that on 25 March 2009 the matter described in the First Schedule hereto in respect of the building specified in the Second Schedule hereto and edged red on the plan attached to this certificate and shown in on the floor plans is lawful within the meaning of section 191 (2) of the Town and Country Planning Act 1990 (as amended), for the following reason:-

The works have become lawful be reason of immunity from enforcement action by having been continuously used as a dental surgery for over 10 years from the date of submission (30.1.09) by virtue of the provisions of Section 171B(3).

Signed (Council's authorised officer)
On behalf of Welwyn Hatfield Council

Date: 25TH March 2009

First Schedule:

Use of both floors of the building at 7 Birchwood Avenue, Hatfield as a dental surgery.

Second Schedule:

7 Birchwood Avenue, Hatfield, Herts AL8 0PL

NOTES:

- 1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).**
- 2. It certifies that the matter specified in the First Schedule taking place on the land described in the Second Schedule was lawful, on the specified date and, thus was not liable to enforcement action under section 172 of the 1990 Act on that date.**
- 3. This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter which is materially different from that described or which relate to other land may render the owner or occupier liable to enforcement action.**
- 4. The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operation begun, in any of the matters relevant to determining such lawfulness.**