

**WELWYN HATFIELD BOROUGH COUNCIL  
EXECUTIVE DIRECTOR - PLANNING, PUBLIC PROTECTION AND GOVERNANCE**

**DELEGATED APPLICATION**

**Application No:** 6/2020/0324/LAWE  
**Location:** 5 Chipmunk Chase Hatfield AL10 9GH  
**Proposal:** Certificate of lawfulness is sought for the conversion of a garage to a habitable room in breach of a parking condition  
**Officer:** Ms Lucy Hale

**Recommendation:** Granted

6/2020/0324/LAWE

Context	
Application Description	Certificate of lawfulness is sought for the conversion of a garage to a habitable room in breach of a parking condition.
Relevant Planning History	<p>Application Number: S6/2005/1314/FP            Decision: Granted            Decision Date: 09 December 2005            Proposal: Variation of condition 3 of reserved matters approval S6/2003/957/DE concerning noise amelioration measures</p> <p>Application Number: S6/2005/0872/FP            Decision: Granted            Decision Date: 11 October 2005            Proposal: Variation of Condition 2 Attached to Outline Planning Permission S6/1999/1064/OP to Allow an Additional 5 Years for Submission of Reserved Matters (Up to 29/12/2015)</p> <p>Application Number: S6/2003/0957/DE            Decision: Granted            Decision Date: 12 November 2003            Proposal: Residential development of 322 dwellings and associated infrastructure. (works pursuant to outline approval S6/1999/1064/OP)</p> <p>Application Number: S6/1999/1064/OP            Decision: Approval subject to s106            Decision Date: 29 December 2000            Proposal: Demolition of existing (unlisted) buildings, removal of runway and other hard standing areas and redevelopment for the following purposes: as a business park comprising uses within use class b1, b2, b8 and sui generis use; housing; new university campus (use class d1 and d2) to include replacement de havilland sports and social club and associated playing fields; two hotels; primary school and associated facilities; district centre; works of conversion to enable recreation use of existing listed hangar; aviation heritage centre. Together with associated highway, transport and service infrastructure (including a strategic transport corridor), landscaping and open space, diversion of ellenbrook.</p>

Means of access to be determined.

Condition no.23:

*All car parking, cycle storage, turning, manoeuvring and loading spaces approved in accordance with Condition 1 hereof shall be provided and available for use prior to the occupation of the buildings to which they relate, and shall be retained and kept available for those purposes at all times thereafter.*

**REASON**

*To ensure that adequate parking facilities are available within the site and that there is no detriment to the safety of the adjoining highways.*

**The main issues are:**

**Whether the applicant can demonstrate, on the balance of probabilities, that the conversion of garage and use as habitable space in breach of condition at 5 Chipmunk Chase began more than 10 year before the date of this application and is lawful.**

#### **Discussion**

The application has been made under section 191(1)(b) of the principal Act. The following general points should be noted:-

- Section 191(4) states that the local planning authority shall be provided with such information is required to satisfy it as to the lawfulness at the time of the application, of the matters described in the application.
- The onus of proof lies with the applicant and the relevant test is the balance of probabilities.
- The evidence must be sufficiently precise and unambiguous to justify the grant of a certificate.
- There is no need for independent corroboration of an applicant's evidence. If the local planning authority has no evidence of its own, or from third parties, to contradict or otherwise undermine the applicant's version of events then there is no good reason to refuse an application.
- If the applicant discharges the statutory tests and meets the burden of proof, the local planning authority must issue a certificate (there is no discretion at this point).
- Once issued, a certificate will be conclusive evidence of the matters to which it refers. As such, the certificate issued must be precise and accurate to avoid unintentionally 'tying the local planning authority's hands' on future enforcement action.

This application seeks to evidence a breach of planning condition is immune from enforcement action as the building work and activity began more than 10 years ago from the date of submission of the application to the Council. The garage at 5 Chipmunk Chase has been converted to habitable space which is contrary to a planning condition attached to the planning permission granted for the estate in 1999 and subsequently amended years later. Condition 23 sought to control the use of garages to be retained

for the use of parking a car.

It is considered that the relevant section of the Town and Country Planning Act 1990, as amended, is Section 171B(3) because this section sets out when breaches of planning control like the one described within the application become immune from enforcement action.

Section 171B(3) says that:

*"In the case of any other breach of planning control, no enforcement action may be taken after the end of ten years beginning with the date of the breach"*

As such, the applicant, therefore, is required through their evidence to demonstrate that the use, building work or activity in breach of this condition on the original planning permission for the estate began more than 10 years before the date of the application being submitted to the Council.

#### Appraisal of submitted Evidence

- A Planning Statement
- Building Regulations Certificate of Completion
- Block Plan and Site Location Plan

The application is supported by a Block Plan, Site Location Plan, a Planning Statement outlining the reasons for the submission of application and Building Regulations Certificate of Completion which is signed and dated by the Building Control Manager at the time.

The Building Regulations Completion Certificate for the garage conversion has been submitted and is signed and dated 5 October 2009. This demonstrates that the planning condition has been breached since 2009, which is more than 10 years. The Council are not in possession of any evidence to contradict this information.

#### **Conclusion**

The decision must be made on the basis of the evidence now available and on the balance of probabilities. The onus of proof is on the applicant.

Section 191(2) of the principal Act requires the Council to assess whether the proposal is lawful in that:-

*(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.*

Accordingly it is considered that the conversion of garage and use as habitable space in breach of planning condition at 5 Chipmunk Chase began more than 10 year before the date of this application and is therefore immune from enforcement action being taken by the Council. It is therefore recommended that a Certificate of Lawfulness be APPROVED for this development.

**Conditions:**

1. It is considered that the conversion of garage and use as habitable space at 5 Chipmunk Chase in breach of planning condition on the original planning permission for the estate began more than 10 year before the date of this application and is therefore immune from enforcement action being taken by the Council. The Certificate of Lawfulness is APPROVED for this development.

**DRAWING NUMBERS**

2. The development/works shall not be started and completed other than in accordance with the approved plans and details:

<b>Plan Number</b>	<b>Revision Number</b>	<b>Details</b>	<b>Received Date</b>
P001		Site Location Plan	5 February 2020

REASON: To ensure that the development is carried out in accordance with the approved plans and details.

**Determined By:**

Mr Jonathan Murray  
27 March 2020