

DELEGATED REPORT

Report by Sam Summers	Date of report: 05/02/2025	Ref: 71411/LDCE
Registration: 28/11/2024	LDFC:	Expiry Date: 23/01/2025
Site Visit:	Site Notice: N/A	Press Date: N/A
Objections:	Con Area:	Adv Type: N/A
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: NREQ

Proposal: Lawful Development for existing use for 2no. two bed self-contained first floor flats

Location: 297A Hollins Lane, Bury, BL9 8BD

Description

Lawful Development for existing use for 2no. two bed self-contained first floor flats. The change of use of part of a building to residential without the benefit of planing permission would be immune form enforcement action after a period of ten years. The building in question conatains a row of three shops at the end of a row of terraced residential properties. The applicant states that part of the building has been converted into 2 flats whilst the ground floor has remained in use as retail shops.

Relevant Planning History

None

Publicity

None

Statutory/Non-Statutory Consultations

None

Pre-start Conditions - None

Development Plan and Policies

Issues and Analysis

Section 171B(3) of the Town and Country Planning Act 1990 states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach relating to the change of use of land.

The onus is on the applicant to show by way of evidence that the use to which the application relates has been carried out for 10 years or more making it immune from planning enforcement action, thus making the use lawful.

The legal test for evidence is on the "balance of probabilities" which in practice means that unless the authority has in its possession evidence that is clearly contrary to that submitted it must grant a certificate. Evidence submitted does not need to be corroborated by third parties.

The applicant has stated that the use began in 2000 and continued until the present day, they have submitted various documents in support of this statement. This includes a letter from the applicant accountant confirming the use since at least 2009. The applicant has provided a copy of the electoral register for the property which suggests the existence of

DELEGATED REPORT

the flats. The applicant has also provided a statement for the tenant in Flat 1 who has lived in the flat since 2001, along with a list of the tenants from flat 2 since 2001.

In conclusion, this evidence must meet the legal test to be applied which is "on the balance of probabilities". The evidence submitted does not require third party corroboration and if the Council does not have contradictory evidence, then a certificate must be granted. The Council has no evidence that would contradict that submitted by the applicant. The use of the first floor for 2 flats has not been abandoned as the use continues and there has been no other use of the site.

As such the Council has no grounds on which to refuse the granting of a certificate. On the balance of probability the first floor of the property has been in use as two flats falling under class C3 for the requisite ten years or more before the date of the application and its use has not been abandoned. Therefore the use of the site for this use is lawful.

On April 25th 2024 the regulations around enforcement time limits were amended to make all works or changes of use carried out without the benefit of planning permission require ten years to have passed to be immune from planning enforcement. The transitional provisions introduced meant that if your project was "substantially completed" before April 25th 2024, then the new time limit would not apply.

Recommendation: LAWFUL

Conditions and Reasons:

- 1 The use described in the First Schedule is deemed to be established and not liable to enforcement action under Section 172 of the Town & Country Planning Act 1990 (as amended) by reason of it existing on site on a continuing basis for ten years or more.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
SS	05/02/2025	DM	5/2/25