Expiry Date - 04/12/2025
Extension of Time -

Development Management – Delegated Officer Report

Application Number: AWDM/1280/25 **Recommendation: – APPROVE**

Site: **5 Westbrooke Worthing West Sussex BN11 1RE**

Proposal: **Application for Certificate of Lawfulness for Existing Use for self-containment of Unit 9 through the addition of a toilet in its en-suite shower room.**

Date of Site Visit: Desk-top assessment only

Neighbours Checked: N/A

Additional Neighbours Notified: N/A

Site and Surroundings

The application relates a large, 2-storey, Victorian villa with rendered elevations and a slate roof occupying a corner plot on the north/west side of Westbrooke within the Richmond Road Conservation Area. The villa is positioned within the NW corner of the plot, with a soft-planted garden and tarmac car parking area wrapping around the east and south sides of the building. The roadside frontages are enclosed by a rendered wall with perimeter planting behind consisting of a mix of shrubs and small trees.

The property appears to have suffered a number of unsympathetic minor alterations but nevertheless makes a positive contribution to the character and appearance of the Conservation Area. It consists of 12 residential letting units comprising a mix of self-contained flats and bedsitting rooms with shared WC and/or shower facilities.

Proposal

This application for a Certificate of Lawfulness for an Existing Use (CLEUD) seeks to establish the lawfulness of the self-containment of Unit 9 through the addition of a WC (within an existing shower room) on the basis that the works do not constitute development resulting in a material change in use.

It is further claimed that if the self-containment works are deemed to constitute development, this has become lawful through the passage of time as the works were carried out more than 4 years ago.

The evidence submitted in support of the application comprises: -

- Letter dated 7th October 2025 from Lewis & Co Planning Consultants
- Statutory Declaration from Owner dated 3 September 2025
- Invoice for installation of WC
- WBC Decision Notice WB/1201/88: Dated 29 November 1988
- Appeal Decision: Land at 28 Stafford Road, Brighton: Dated 31 October 1990
- Appeal Decision: Land and building at 11 St James's Avenue, Brighton

- Appeal Decision: Land and building at 21 Russell Square, Brighton
- Appeal Decision: 60 Netherwood Road, London, W14 0BG.

Relevant Planning History:

WB/1201/88 Change of use from a residential hotel to 11 bedsitting room units (non self-contained). Permitted 29.11.1988. The approved accommodation included 11 bedsitting units plus the Applicant's own accommodation on the ground-floor and a communal lounge for all residents.

Consultations

Legal Officer:

The issue is whether Unit 9 being self-contained amounts to a material change of use requiring planning permission.

I note the appeal decision of 60 Netherwood Road, London W14 OBG (Appendix 5). The dwelling consisted of self-contained flats in the basement and ground floor. The appeal concerned the first and second floors only which contained two non self-contained bedsitting rooms with a shared bathroom/WC on each floor. The Inspector stated at present there were two self-contained flats (2 planning units) and an HMO (third planning unit). The proposal was that the four non self-contained flats become self-contained (four planning units). There were no external works. The issue was whether the use of the first and second floor flats to four separate units amounts to a material change of use requiring planning permission. It referred to the case of Winton (below) and stated that the mere sub-division of a planning unit did not, of itself amount to a change of use, the effect of such a split may, as a matter of fact and degree constitute a change of use.

In this case there had been no increase in the floor area of the residential accommodation, no significant change in the nature of residential use and it would not facilitate occupation by any more people. The Inspector concluded the changes would amount to little more than the provision of private washing and bathing facilities which would be "of such little significance as to not cause a material change of use…. I cannot see that those minor alternations would so affect the character of the residential occupation of the first and second floors…"

In the case of Winton & Others v SSE & Guildford BC [1982] the Court held that while the mere sub-division of a planning unit did not, of itself, amount to a material change of use, the effect of such a split may, as a matter of fact and degree constitute a material change of use.

This is ultimately a planning decision, however there would be no increase in the floor area of the residential accommodation. There would be effectively no change in the nature of the residential use of the building. The proposed Unit 9 would not facilitate occupation by any more people; This would effectively amount to the provision of private toilet facilities for the resident of Unit 9 and would appear to be of such little significance as to not cause a material change of use to the Property.

I have not been provided with any contrary evidence to the above.

My conclusion is that an CLEUD should be issued, although it is a planning decision to determine whether my fact and degree the inclusion of a toilet would amount to a material change of us.

If you agree with the conclusion above that there has not been a material change of use I do not need to consider the sufficiency of the evidence of the Statutory Declaration in terms of whether it immune from enforcement action due.

Relevant Legislation

S55 of the Act relating to 'the meaning of development'.

PPG makes it clear that the onus of proof in a CLEUD application is placed firmly upon the Applicant. The Applicant's own evidence does not need to be corroborated by independent evidence, although corroboratory statements or declarations may assist. If the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probabilities".

The Levelling-up and Regeneration Act 2023 changed the time limits for planning enforcement action set out in the S171B(2) of the Act to 10 years for all forms of development. However, transitional provisions apply which mean that where any unauthorised works to create a separate dwelling house took place before 25 April 2024 – the relevant time limit is till 4 years from the date of the 'breach'.

Planning Assessment:

The relevant consideration is a matter of fact and degree whether the evidence submitted demonstrates on the balance of probability that the self-containment of unit 9 through the provision of a WC did not constitute 'development', and if it did constitute 'development', that it is lawful, having become time exempt from planning enforcement action.

The planning merits of the self-containment works are not relevant to the decision.

Substantial weight must be attached to the Statutory Declaration provided by the Applicant which provides the following key statements:

- The Applicant purchased the property on 10th May 2019.
- When the building was acquired, it was arranged as 12 letting units. 8no units (1, 2, 3, 4, 8, 10, 11 and 12) had been self-contained. 3no units (5, 6, and 7) were sharing facilities. The remaining unit, Unit 9 was not in a habitable condition having been gutted prior to selling but included the remnants of a bathroom with waste pipes in situ.
- Refurbishment of the building commenced on 21 October 2019.

- On 5 February 2021 a toilet was installed in the bathroom of Unit thereby self-containing the unit.
- Today, the building consists of 12 letting units in the same layout with units 1, 2, 3, 4, 8, 9, 10, 11 and 12 self-contained, and units 5, 6, and 7 sharing facilities.

Site Background

There are scant formal planning records relating to the property since the permission granted in 1988 (WB/1201/88) for change of use from a residential hotel to 11 bedsitting room units (non self-contained).

A number of the letting rooms had become self-contained prior to the building being acquired by the current owner in 2019.

At the time the building was acquired, the former owner had been using 3 rooms (8, 9 and 10) as their own personal accommodation. There are no formal planning records relating to this use by the former owner, or for how long rooms 8, 9 and 10 had been occupied in this way.

The overall number of residential letting rooms (or units) at the property is the same today as when the property was acquired in 2019, and at the time of the last formal planning decision relating to the use of the building in the 1988 (i.e. 12 residential units).

The Applicant's Case

Section 55(2)(a) of the Act sets out that works affecting only the interior of a building shall not be taken to involve development.

The self-containment works involving the installation of the WC to unit 9 would not amount to development under S55(2)(a).

Section 55(3)(a) of the Act sets out that the use as two or more separate dwelling houses in a building previously used as a dwelling house constitutes development.

The Applicant's Supporting Letter outlines that as the use of the building is not a single dwelling house the works cannot be considered under S55(3)(a). Four appeal decisions (listed) have been provided to support the Applicant's argument that a building arranged as arranged in bedsits or flats cannot be considered a dwelling house, and that therefore S55(3)(a) cannot be applied.

The Letter also states that the self-containment of unit 9 has not resulted in a material change in the character of the building since it is still made up of 12 residential units. It states that the fact that there has been no change in the overall number of units (self-contained or otherwise) is most significant in the context of the High Court case LB Richmond upon Thames v SoS for Environment, Transport and the Region and Richmond upon Thames Churches Housing Trust [2001]. Here it was held that if a change of use gives rise to a planning consideration that consideration should be taken into account when assessing whether a 'change of use' is "material". Such planning considerations could include the loss of small units, strain on welfare

services, the stock of private accommodation available for renting, or the residential character of the area.

The Letter goes on to argue that no planning considerations have been affected since:

- there has been no change in the overall number of lettable residential units within the building
- the number of residents remains similar
- there has been no material impact on the character of the area, the demand for car parking or welfare services,

It is stated that the only difference is that some residents no longer have to share toilet facilities.

In light of the above, it is stated that the self-containment of unit 9 (and the earlier self-containment of units 1, 2, 3, 4, 8,10 11 and 12) did not amount to a change of use that would have required planning permission. In effect the permitted use of 5 Westbrooke since the 1980s was that of a building providing 12 residential letting units, and this is still the case now.

If the LPA finds otherwise and holds that the self-containment works did constitute 'development', the Letter sets out that as the works were carried out more than 4 years ago, they have become lawful and time exempt from enforcement action. Evidence to support this claim includes the Applicant's Statutory Declaration giving the date the work to install the toilet was undertaken, together with an invoice for this work from the contractor.

<u>Other Evidence</u>

- Email correspondence between the Applicant and the Council's Private Sector Housing Manager (between Oct 2020 and Dec 2020) referring to the proposed use of the rooms behind the security door as having been used for some time by the former owner/landlady as her own self-contained accommodation. [i.e. units 8, 9 and 10.] The PSH manager states: "*Your proposal to subdivide these rooms into 3 additional self-contained studio flats would create 3 new units of accommodation that fall far below the national technical space standards of 37sqm, and this would not be acceptable to either planning or ourselves. They could, however, be converted into 3 bedsits as for elsewhere in the building which meet the required space standards and make use of the existing shared facilities as discussed*."

This email casts some doubt on the evidence provided in the Applicant's Statutory Declaration concerning the layout of the building as 12 letting rooms at the time of purchase in so much that units 8, 9 and 10 were apparently occupied as 1no self-contained unit by the former owner/landlady.

- A copy of the HMO licence PSH/14057. The licence dated as valid from December 2019 was first issued on 5 May 2021 and varied on 12 August 2022. The licence stipulates that the building is suitable for occupation by not more than 12 households comprising up to 24 people. It describes the location of each letting room within the building and the permitted number of occupiers per room. It identifies the shared facilities, and which rooms are sharing facilities. Rooms 5, 6,

7, 8, 9 and 10 are identified as bedsits that share communal the WC and shower facilities on the first floor. The HMO licence expired on 8 December 2024.

The HMO licence appears to cast doubt on the evidence provided in the Applicant's Statutory Declaration concerning the date(s) when the 3no first-floor rooms, which at the time of purchase of the building had been used collectively by the former owner/landlady as a self-contained suite rooms, became separate letting rooms (rooms 8, 9 and 10).

- The Committee report for the planning permission granted under WB/1201/88 for change of use from a hotel to 11 bedsittting rooms together with the applicants own accommodation identifies that all but 2no of the bedsitting rooms would be single person lettings (and the other 2 would be doubles). Thus, the letting rooms had a maximum occupancy of 13 persons plus the applicant's own accommodation.

This casts doubt on the Applicant's argument concerning the 'materiality' of the self-containment of units 1, 2, 3, 4, 8, 9, 10 11 and 12) since the current occupancy level (of up to 24 people) can be held to be materially different in its effect than as originally granted by the planning permission WB/1201/88.

Conclusion

It is relevant that the current CLEUD application relates only to unit 9 (and not the self-containment of the other units in the building).

(i) The Council's Legal Officer attaches significant weight to the High Court case of Winton & Others v SSE & Guildford BC [1982] which determines that whilst the mere sub-division of a planning unit did not in itself amount to a change of use, the effect of such sub-division may, as a matter of fact and degree, constitute a change of use.

The Legal Officer also notes the similarities of the current case with the submitted appeal decision of 60 Netherwood Road, London, W140BG where the Inspector concluded that the provision of private washing and bathing facilities would be of such little significance as to not cause a material change of use, nor affect the character of the residential occupation.

In this case, the installation of the WC in Unit 9 did not result in an increase in the floor area of the residential unit and has not facilitated occupation by more people than previously (i.e. when the HMO licence was varied in August 2022). Consequently, it is considered that the installation of private toilet facilities in unit 9 has not affected the character of residential occupation of this unit and is of such little significance as cannot be considered to have resulted in a material change of use.

(ii) An invoice dated 05.02.2021 from a plumber refers to works completed at 5 Westbrooke, detailing the installation of basins and toilets using existing soil pipes in units 8 and 10, and a new soil branch in unit 9. It is considered this is sufficiently precise and unambiguous evidence to corroborate the owner's

Statutory Declaration that the self-containment works took place more than 4 years ago and is therefore exempt from enforcement action through the passage of time.

Recommendation:

ISSUE CERTIFICATE

The Local Planning Authority is satisfied that the self-containment of Unit 9 through the installation of a WC (i) has not amounted to 'development' resulting in the material change of use of the property, and (ii) took place more than 4 years ago and is exempt from planning enforcement action. The existing self-containment of unit 9 is therefore lawful for planning purposes.

Is recommendation contrary to letter(s) of representation? N/A

Case Officer:	Jo Morin	Date: 20.01.2026
Authorised by:	Louise Prew	Date:22/01/2026