RODWAY PLANNING
CONSULTANCY LIMITED

STATEMENT OF CASE

'Certificate of Lawful Use Existing relating to the use of an existing loft space (known as Flat 14) as a single independent residential unit'

5-7 Warwick Gardens, Worthing, West Sussex, BN11 1PE

December 2023

293 UPPER SHOREHAM ROAD, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 5QA
T +44 (0)1273 780 463 / INFO@RODWAYPLANNING.CO.UK / RODWAYPLANNING.CO.UK
COMPANY NUMBER: 10353422 VAT REGISTRATION NO: 217 9600 05

RTPI Chartered Town Planner

RODWAY PLANNING
CONSULTANCY LIMITED

1.0 INTRODUCTION

1.1 We are instructed on behalf of our client, John's Yard Limited, to submit an application for a Lawful Development Certificate in relation to 'Flat 14', in the existing loft space at 5-7 Warwick Gardens, Worthing.

1.2 The application seeks to obtain a Legal Development Certificate as legal confirmation that the unit that is known as 'Flat 14', 5-7 Warwick Gardens, Worthing, now lawfully operates as 1 No. separate self-contained residential unit.

1.3 The evidence provided makes it clear that the relevant part of the building has been in continuous use as 1 No. independent residential unit for a period in excess of 4 years up to the date of submission.

1.4 This statement sets out a brief history of the property and then addresses the legal basis for the application and the evidence submitted to justify the facts of the case.

1.5 We consider that this evidence sufficiently demonstrates, on the balance of probability, that the use of the unit as 1 No. independent residential unit has been operating in this fashion continuously for longer than the 4-year qualifying period. We therefore consider there to be no reasonable basis to withhold a Lawful Development Certificate.

RODWAY PLANNING
CONSULTANCY LIMITED

2.0 SITE DESCRIPTION

2.1 The site that is the subject of this Certificate of Lawfulness application is located to the west side of Warwick Gardens. The building comprises flatted development.

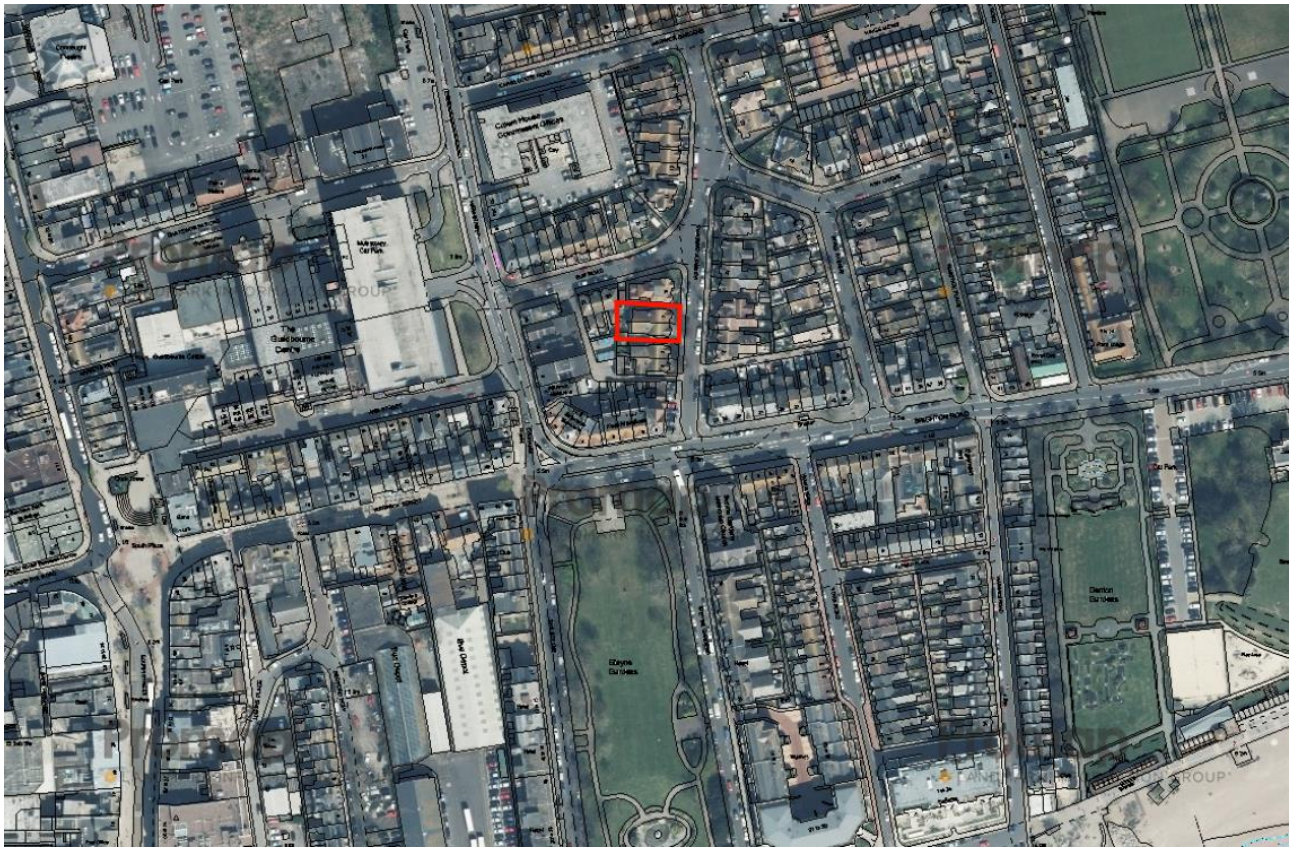

Fig 1. Aerial map showing the site and its surroundings (*courtesy of Pro Map*)



Fig 2. Aerial Map showing the site and its immediate surroundings *(Courtesy of Pro Map)*

2.2 The building comprises of 15 No. Flats, spread out over three floors (as detailed at **fig 3** below).



Fig 3. Existing Floor Plans – Ground, First and Second Floor

2.3 The application site is located within a predominantly residential area located just off the A259, which at this point comprises primarily commercial uses at ground floor. Buildings within the surrounding locale are varied, comprising a mixture of semi-detached, terraced and flatted properties.

2.4 With regard to site designations, the site is located within the defined built up area. The site is also located within a Conservation Area. To our knowledge, no other planning related constraints or restrictions relate to the site.

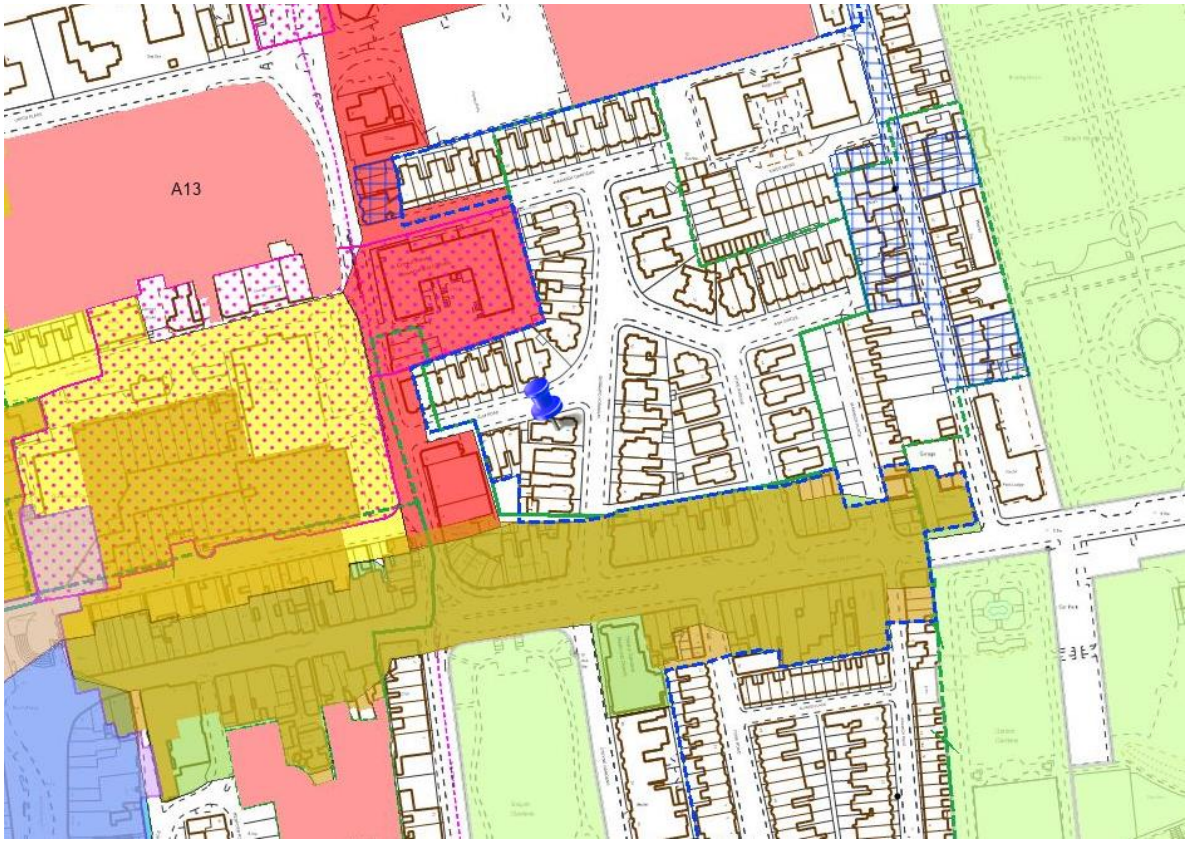

Fig 4. Extract from Worthing Borough Councils interactive Map

3.0 PLANNING HISTORY

3.1 According to the Council's website, the Planning History for 5 - 7 Warwick Gardens, Worthing, West Sussex BN11 1PE is as follows:

- **Planning ref: 90/05718/FULL/:** Retrospective application for the formation of hard standing for vehicles in front of No. 5 and 7 Warwick Gardens. Refused.
- **Planning ref: 90/05719/CAC/:** Demolition of garden wall to no. 5 Warwick Gardens (Retrospective). Application Refused.
- **Planning ref: 90/05720/FULL/:** Construction of a front boundary wall. Application Permitted.
- **Planning ref: 04/01060/FULL/:** Change of use from Guest House (Use Class C1) to 2 single dwelling houses (use Class C3). Application Refused.

4.0 CONSIDERATIONS

Legal Background

4.1 For the purpose of obtaining a certificate of lawfulness, Section 191 of the Town and Country Planning Act 1990 sets out:

"If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

(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.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b)it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a) the time for applying for an order under section 171BA(1) (a "planning enforcement order") in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.]

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed."

4.2 In respect of the 'time for enforcement action' Section 171B(2) of the 1990 Act states:

"Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach".

4.3 Furthermore, the National Planning Practice Guidance provides that if a local planning authority has no evidence itself, nor any 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 is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.

Time Limits

4.4 Section 171(B) of the Planning and Compensation Act 1991 introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

4.5 The time limits are:

1. four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially complete;

2. **four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken;**

3. 10 years for all other development. The 10 year period runs from the date the breach of planning control was committed

4.6 Once the relevant time limit has passed, the development and/or use becomes lawful, in terms of planning.

Evidence

4.7 The above-mentioned extracts provide the legal basis for this application and subsequently we have provided the following evidence to demonstrate that the building has been used as a single independent residential unit for a continuous period in excess of four years:

(i) Statutory Declaration by Ian Boyd of Flat 3, 32 Sussex Square, Brighton, BN2 5AB, signed and dated 20th April 2023.

4.8 it confirms that Mr. Boyd purchased the property known as 5-7 Warwick Gardens, Worthing, BN11 1PE jointly with his partner, Geoffrey Kenneth Hutchinson on 28th February 2013 and they owned it continuously until 5th November 2021, when they sold it to Johns' Yard Limited. Mr Boyd confirms that throughout their period of

ownership, they let the individual flats within the Property on assured shorthold tenancies for the rental income.

4.9 It goes on to state that the property originally comprised Flats 1-13 and 13a. Mr. Boyd and Mr. Hutchinson created an additional flat ('Flat 14) in the loft of the property, and the works required to make this flat fully self-contained were completed in early February 2019.

4.10 An EPC assessor inspected Flat 14 on 15th February 2019, once the loft conversion works had been completed, and an EPC with a D rating was granted to Flat 14 on 18th February 2019.

4.11 Mr. Boyd confirms that they granted an assured shorthold tenancy on Flat 14 to Toby Doyle on 19th February 2019. This continued until Mr Doyle moved out. Mr Boyd subsequently granted an assured shorthold tenancy to a new tenant, Scott Catterson, on 8th May 2021. Scott was still in occupation of Flat 14 under the terms of this tenancy when Mr Boyd sold the Property to John's Yard Limited on 5th November 2021.

4.12 Mr Boyd confirms that he makes the Statutory Declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

(ii) Statutory Declaration by John Blake of Ratoath House, Hazlewood Close, Storrington, West Sussex, RH20 3HX, signed and dated 25th October 2023.

4.13 John Blake is the Director of Johns' Yard Limited.

4.14 It states that on 5th November 2021, Johns' Yard Limited purchased the property known as 5-7 Warwick Gardens, Worthing, BN11 1PE.

4.15 Mr Blake confirms that the previous owner of the Property, Ian Boyd, has provided a statutory declaration setting out the relevant history of the Property from when he purchased it in 2013 until its sale to Johns' Yard Limited.

4.16 Following Johns' Yard Limited purchase of the property, Scott Catterson remained in occupation of Flat 14.

4.17 Mr. Blake confirms that the whole property needed considerable modernisation. He states that normally this would involve terminating the tenants' tenancy agreements and then refurbishing the flats. However, Flat 5 became vacant and was immediately refurbished. Following this refurbishment, Scott Catterson vacated Flat 14 and moved into Flat 5. This took place in November 2022.

4.18 The declaration confirms that this meant that Flat 14 could be temporarily occupied by various other existing tenants of the building whilst they refurbished their individual flats. It is confirmed that none of the tenants who were already in situ in the Property lost their homes. For almost 10 months a team of builders worked at the property modernising the individual flats and the fabric of the building.

4.19 Since 15th October 2023, Unit 14 has been occupied by Mr Goncalo Amorim.

4.20 It confirms that Mr. Blake makes this declaration conscientiously believing the same to be true and by virtue of the Statutory Declaration Act 1835.

(iii) Assured Shorthold Tenancy Agreements

a. Scott Catterson

4.21 An Assured Shorthold Tenancy Agreement, issued by the Residential Landlords Association. The agreement is dated 8th May 2021. It is an agreement between Ian James Boyd & Geoffrey Kenneth Hutchinson of Flat 3, 32 Sussex Square, Brighton, BN2 5AB (the landlord or landlords) and Scott Catterson.

4.22 It confirms that the rent was £650 every calendar month.

4.23 The agreement confirms that the property being rented was Flat 14, 5/7 Warwick Gardens, Worthing, BN11 1PE. The agreement was between 7th May 2021 and 6th May 2022.

4.24 The agreement is signed by the landlords and tenant.

4.25 The agreement is accompanied by an email chain between Ian Boyd and Scott Catterson on 2nd May 2021, referring to the 'swapping' of flats 6 and 14, 5/7 Warwick Gardens.

b. Toby Michael Doyle

4.26 An Assured Shorthold Tenancy Agreement, issued by the Residential Landlords Association. It is an agreement between Ian James Boyd & Geoffrey Kenneth Hutchinson of Flat 3, 32 Sussex Square, Brighton, BN2 5AB (the landlord or landlords) and Toby Michael Doyle.

4.27 It confirms that the rent was £670 every calendar month.

4.28 The agreement confirms that the property being rented was Flat 14, 5/7 Warwick Gardens, Worthing, BN11 1PE. The agreement is between 15th February 2019 and 14th August 2019.

(iv) Builder's invoice

4.29 Email chain between Ian Boyd and John Blake, dated 25th November 2023. It refers to an invoice from Przemek for the works to convert/ reinstate the loft at Warwick Gardens to form Flat 14. The invoice is in email form, and is dated 22nd February 2019.

(v) Tenant Emails

a. August 2019

4.30 Email correspondence between Rosie Victory (on behalf of Toby Doyle) and Ian Boyd The email chain dates between 14th August 2019 and 17th August 2019 and relates to the payment of rent on behalf of Toby Doyle. The email confirms that Toby's 6 month rental ended on Sunday 18th August 2019 and recommenced on Monday 19th August 2019. The email confirms that 3 months' rent was paid in advance (£2,020). The following 3 months was due to be paid in mid-November 2019.

b. 2018-2019

4.31 Email correspondence between Ian Boyd and Toby Doyle, dated between 7th September 2018 and 25th November 2023. The emails confirm the terms of the tenancy, including 6 months' rent being paid upfront.

(VI) Appendices

4.32 **Appendix A:** Energy Performance Certificate (EPC), dated 18th February 2019, and specifically refers to Flat 14, a top floor flat at 5-7 Warwick Gardens.
Appendix B: Gas Safety Certificate, dated 4th February 2019

5.0 SUMMARY

5.1 This application seeks to obtain legal confirmation that Flat 14, 5/7 Warwick Gardens, West Sussex, BN11 1PE is lawfully in use as 1 No. separate and independent residential unit, in accordance with Section 191 of The Town and Country Planning Act 1990.

5.2 We conclude that on the basis of the evidence supplied, that the loft space's use as 1 No. separate and independent residential unit is lawful and has been operating for longer than the qualifying periods set out in Section 171B of the 1990 Act. It is clear from the evidence supplied that 'Flat 14', 5/7 Warwick Gardens has been used as 1 No. separate and independent residential unit since at least 19th February 2019, as confirmed by the Statutory Declaration by Ian Boyd of Flat 3, Sussex Square, Brighton, BN2 5AB, signed and dated 20th April 2023. The use of the building as 1 No. separate and independent residential unit has been continuous for over 4 years, and in planning terms it is therefore lawful.

5.3 Indeed, this view is supported by recent case law (Arun DC v First Secretary of State Also known as: R. (on the application of Arun DC) v First Secretary of State**),** which confirmed that *"the time limit for enforcement action in respect of the change of use of any building to use as a single dwelling house was four years under the Town and Country Planning Act 1990 s.171B(2) whether the breach of planning control consisted of development without permission or breach of a condition of planning permission".*

5.4 The residential unit meet the case law tests for a "dwelling house" as set out in the Gravesham Borough Council v Secretary of State for the Environment: QBD 1982 case. The distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence for instance, personal washing facilities, cooking facilities etc. Such facilities are all

provided within the residential unit, the subject of this Lawful Development Certificate application.

5.5 The standard of proof required on the part of the Applicant is no more than the "balance of probability". The Authority would have no excuse for refusing a Lawful Development Certificate (LDC) because the applicant failed to discharge the stricter, criminal burden of proof ("beyond reasonable doubt"). In FW Gabbitas v SSE (1985) J.P.L 630 the High Court held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. There is no need for example, for utility bills to be produced in order to confirm occupation of the property.

5.6 Further, if the LPA 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 is sufficiently precise and unambiguous to justify the grant of a certificate *"on the balance of probability"*. This reflects the ministerial advice that was formerly printed in Annex 8 to Circular 10/97, at paragraph 8.15. A site visit will confirm that the loft space is clearly in a residential use, and has been established as such for some time.

5.7 Taking into consideration the legal tests by which a Lawful Development Certificate application should be considered, we believe that we have adequately shown, on the balance of probability, that Flat 14, 5/7 Warwick Gardens, West Sussex, BN11 1PE is lawfully an independent residential unit in its own right. Furthermore, the National Planning Practice Guidance provides that if a local planning authority has no evidence itself, nor any 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. We therefore respectively request that a Certificate of Lawfulness be granted.

December 2023