

Delegated Decision Report

Application No:	26/0184	Statutory Period Expires:	28th August 2026
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Site:	34 Albert Avenue Newport NP19 8FS		
Proposal:	CERTIFICATE OF LAWFULNESS FOR EXISTING USE OF PROPERTY AS 2NO. APARTMENTS		
Applicant:	J Pestuccio		
Type:	Lawful Development Existing	Ward:	Victoria
Decision:	REFUSED		

1. BACKGROUND

1.1 None.

2. SITE LOCATION AND CONTEXT

2.1 The property is a semi-detached dwelling located on the corner of Albert Avenue and Fair Oak Avenue.

3. DESCRIPTION OF DEVELOPMENT

3.1 This application seeks to confirm, via a lawful development certificate, that the existing use of the property as 2no apartments is the lawful use.

3.2 The two apartments are referenced as the main house no.34 Albert Avenue and the garden/basement flat no.34a Albert Avenue.

4. RELEVANT SITE HISTORY

App Number	Proposal	Decision	Decision Date
90/0468	ERECTION OF A TWO STOREY BUILDING FOR USE AS GARAGE/WORKSHOP WITH STORAGE ACCOMMODATION ABOVE	REFUSED	08/07/1990
90/1325	RETENTION OF EXISTING NEW BUILDING FOR USE AS A GARAGE WITH A FLAT OVER	REFUSED – APPEAL DISMISSED	08/03/1991
91/1303	ALTERATION OF EXISTING TWO STOREY STRUCTURE TO SINGLE STOREY FOR USE AS A DOMESTIC GARAGE	REFUSED – APPEAL DISMISSED	19/12/1991
92/0256	PROPOSED ALTERATION OF EXISTING DWELLING TO CREATE DOMESTIC GARAGE	GRANTED WITH CONDITIONS	08/06/1992

5. PLANNING POLICY

5.1 Not applicable.

6. CONSULTATION RESPONSES

6.1 None.

7. PUBLIC REPRESENTATIONS

7.1 None.

8. ASSESSMENT

8.1 Under section 191(2) of the Town and Country Planning Act 1990 ('TCPA 90') the use of a building is 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. Therefore, if the time for the LPA to take planning enforcement action has expired, then the use will be lawful.

8.2 Section 55(3)(a) of TCPA 90 confirms that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. Section 171B of the TCPA 90 confirms that the time limited for enforcement action for a material change of use of any building (not to a use as a single dwelling) in Wales is 10 years. Therefore, that the burden of proof upon the applicant is to show that the material change of use of the single dwellinghouse to two separate apartments has occurred over a continuous 10 year period prior to submission of the application.

8.3 The applicant confirms that the building was a residential building which has been converted into two apartments prior to the applicant purchasing the property in 2010 and has been used as such without interruptions up until the date of the application. The following information has also been provided;

- Completed Application Form
- Site Location Plan
- Existing Elevations
- Existing Plans
- Statutory Declaration from the Applicant 09.05.26;
- Copies of Statutory Declarations from Previous Tenants dated 18.05.26;
- Council Tax bill for Garden Flat, 34a Albert Avenue dated 28.04.26;
- Copy Email from Applicant enclosing Council Tax Property Information for Garden Flat, 34a Albert Avenue;
- Copy Email between Applicant & Council Tax Dept;
- Copy Council Tax Property Information for Garden Flat 34a Albert Avenue;
- Copy Email from Architect including 2013 drawings.

8.4 Council records show that 34 Albert Avenue has been in the council tax system since 22.03.2002 The property has been empty for the below dates:

22.03.2002-11.05.2002

30.11.2002-14.12.2002

13.02.2003-11.06.2003

11.11.2003-6.12.2003

26.11.2007-11.12.2007

25.05.2009-30.08.2009

28.01.26- Present

Tenants have been in the property for the time in between.

Insofar as the Garden Flat, 34A Albert Avenue is concerned, Council records confirm this has been on the council tax system since 01.05.2014.

The property has been empty for the below dates:

31.03.2016-08.04.2016

25.02.26 to Present

Tenants have been in the property for the time in between.

8.5 Plans

A site location plan drawing no.A640-100, existing floor plans drawing no.A640-101B and existing elevations drawing no.A640-102 were provided in support of the application. The drawing numbered A640-101 that was provided shows a one-bedroom flat on the lower ground floor and a two-bedroom flat between the ground and first floor. The garden flat has one access from Fair Oak Avenue. The main house has its main access from Albert Avenue however there is a secondary access from the Fair Oak Avenue side via an external staircase. The accesses for both apartments are separate and not internally linked, showing that they are physically two separate apartments and not sharing an access.

8.6 A set of existing lower ground floor, ground floor and first floor plans were also provided

dated November 2013. The applicant advised that these were undertaken by an architect for a proposed extension in 2013 that was never submitted. The floor plans show 2no separate apartments and are similar to that submitted in support of the current application.

- 8.7 Whilst the above may demonstrate that physically the property constitutes two self-contained apartments, it does not demonstrate that the property has been occupied as two separate apartments for the full 10 consecutive years preceding the application.
- 8.8 Statutory Declarations
Three statutory declarations have been provided; 1no from the applicant and 2no from previous tenants.
- 8.9 The applicant's statutory declaration confirms that since 2002 the property has consisted of two self-contained properties, the main house and a separate garden/basement flat. It also confirms that the two properties have been recognised separately for Council Tax purposes and have separate postcodes.
- 8.10 Two further statutory declarations were also received from previous tenants. The first tenant's statutory declaration confirms that they resided in the garden flat from 2011-2013 and that the flat was a separate property to the house above which had separate tenants in it. The second tenant's statutory declaration confirms that they lived in the property for 18 years before moving out in February 2026. This 18-year residence includes living in the garden flat for 2 years and the house for 16 years. It is noted that insofar as the garden flat is concerned, such occupancy appears to have occurred prior to Council Tax registration for this flat.
- 8.11 The statutory declarations do not include dates for which the tenants resided in the apartments. Whilst the second tenant confirmed that they lived in the main house for the 10 years preceding the application, it doesn't confirm if there was someone living in the garden/basement flat and whether, if someone was residing there, they were a separate tenant. No copies of tenancy agreements were provided to support these statements. It is therefore considered that the statutory declarations do not evidence that on the balance of probabilities, the property has been used as two separate apartments for 10 consecutive years immediately before the application was submitted
- 8.12 Council Tax
One Council Tax bill was provided dated 28/04/2026 relating to the garden flat. Screenshots were also provided confirming that the previous tax band for the property was deleted and the current band is B with effect from 1st May 2014. Council Tax bills for both the garden flat and main house were requested in order to demonstrate separate billing for each individual apartment, but these were not received. On this basis, it is considered that this is not sufficient evidence to demonstrate that the property has been used as two separate apartments for the full 10 consecutive years preceding the application.
- 8.13 As well as the above, the Officer has contacted Council Tax for further information as outlined above. In relation to the main house, no.34 Albert Avenue, it has been in the Council Tax records since 22/03/2002. The records confirm that the property has been empty on 7no separate occasions but these have typically ranged from 2 weeks to 6 weeks with the longest gap being 4 months in 2003. Council Tax confirm that tenants have been in the property for the time in between. The property is currently empty and has been since 28/01/2026. It was evident during the Officer's site visit that renovation works are currently being undertaken at the property. Generally, it is expected in rental properties that there are short periods where the property may be empty whilst works are undertaken, new tenants sought etc.
- 8.14 In relation to the garden flat, no.34a Albert Avenue, it has been in the Council Tax records since 01/05/2014. The property has only been empty on two occasions and tenants have been in the property for the time in between. The first being for 9 days in 2016 and the second being from 25/02/2026 to present. As above, during the Officer's site visit it was evident that renovation works are currently being undertaken at the property which accounts for the current empty status of the apartments. Council tax records show who is officially registered as responsible for paying the tax on a property, but a council tax bill or

statement is not definitive proof that a person physically lives there or occupies it on a daily basis.

- 8.15 Google streetview images show signage on a front pillar directing to the garden flat has been present for well over 10 years but again, this is not definitive. Images also show two sets of recycling receptacles, one at the front and one on the side road adjacent to the access to the garden flat in 2008 but this is again not definitive in terms of showing occupancy for the required period albeit all streetview images since 2008 appear to indicate the whole property is or has recently been occupied with signs of activity such as open windows, curtains drawn, and vehicles parked in the rear hardstanding from 2015. None of these are definitive in themselves as windows may be open and nets or curtains present irrespective of occupancy and do not demonstrate occupancy as 2no. apartments. The burden of proof rests with the applicant in this case. Utility bills and electoral registration details that may tip the balance of probabilities have not been provided.

9. OTHER CONSIDERATIONS

9.1 *Crime and Disorder Act 1998*

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

9.2 *Equality Act 2010*

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership.

9.3 Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

9.4 The above duty has been given due consideration in the determination of this application. It is considered that there would be no significant or unacceptable impact upon persons who share a protected characteristic, over and above any other person, as a result of the proposed decision.

9.5 *Planning (Wales) Act 2015 (Welsh language)*

Section 31 of the Act clarifies that impacts on the Welsh language may be a consideration when taking decisions on applications for planning permission so far as it is material to the application. This duty has been given due consideration in the determination of this application. It is considered that there would be no material effect upon the use of the Welsh language in Newport as a result of the proposed decision.

9.6 *Newport's Well-Being Plan 2018-23*

The Wellbeing of Future Generations (Wales) Act 2015 imposes a duty on public bodies to carry out sustainable development in accordance with the sustainable development principle to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. This duty has been considered during the preparation of Newport's Well-Being Plan 2018-23, which was signed off on 1 May 2018. The duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

10. CONCLUSION

- 10.1 It is considered that, on the balance of probabilities, insufficient evidence to demonstrate that the property has been occupied as two separate apartments for the full 10 consecutive years preceding the application has been provided. Therefore, the lawful development certificate is refused.

11. DECISION

REFUSED

01 There is insufficient evidence, that the building has been in use as 2no. apartments for the required immunity period history on the balance of probability. The Certificate is therefore refused under section 191(2) of the Town and Country Planning Act 1990.

NOTE TO APPLICANT

01 This decision relates to plan Nos: Location Plan Drawing No.A640-100, Existing Plans Drawing No.A640-101B, Existing Elevations Drawing No.A640-102, Email from Architect including 2013 drawings, Council Tax bill for Garden Flat, 34a Albert Avenue dated 28.04.26, Email from Applicant enclosing Council Tax Property Information for Garden Flat, 34a Albert Avenue, Email between Applicant & Council Tax Dept, Council Tax Property Information for Garden Flat 34a Albert Avenue, Statutory Declaration from the Applicant 09.05.26 and Statutory Declarations from Previous Tenants dated 18.05.26.

02 The development plan for Newport is the Newport Local Development Plan 2011 – 2026 (Adopted January 2015). No policies were relevant to the determination of this application.

03 Due to the minor nature of the proposed development (including any demolition) and the location of the proposed development, it is considered that the proposals did not need to be screened under the Environmental Impact Assessment Regulations.