

**PLANNING STATEMENT IN SUPPORT OF S191 APPLICATION FOR LAWFUL DEVELOPMENT
CERTIFICATE FOR EXISTING USE OF PART OF BUILDING AS 18 STUDIO FLATS**

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Applicant: Montague Properties Ltd

Address: 165-167 Haverstock Hill London NW3 4QT



Location Plan and Floor Plans

Floor Plan Drawing Nos. HD922- 5000, 5001,5002, 5003,5004,5005

SUPPORTING STATEMENT

EVIDENCE IN SUPPORT OF THE CERTIFICATE SOUGHT

The submitted location plan identifies the curtilage of the building, the subject of this application and the accompanying floorplans indicate the existing internal layout.

In support of the LDC application 6 Statutory Declarations are provided by:

1. Daniel Elghanian (Property Manager)
2. Jarek Zurek (Caretaker/handyman)
3. Ricky Stone (Letting Agent & Director- Stones Residential Ltd)
4. Denise Barbarino (tenant)
5. Mohamed Salman (tenant)
6. Filipa da Cunha Thomas (tenant)

RELEVANT BACKGROUND

Nos. 165-167 Haverstock Hill is basement plus 4-storey terraced property on the south-west side of Haverstock Hill, just south of its junction with Howitt Road.

33 Bassein Park Road, London W12 9RW
Tel: 020 8749 9001

Partners: George M. Vasdekys BA DIP TP MRTPI – Myra C. Barnes BA DIP TP MRTPI
Email: george@salisburyjones.com – myra@salisburyjones.com - website: www.salisburyjonesplanning.com



The ground floors are in commercial use and the 3 floors above are in residential use with a separate dental surgery at 1st floor level. The application site is opposite Belsize Park underground station.

THE FACTS

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The property was purchased by the Applicant in December 2004.

It comprised 2 commercial shops on the ground floor and 6 upper floor flats (Flat A, B, C, D, E, F).

At the time of purchase, Flat A had been sold on a long lease and used as a dental practice, as it is now.

Flat B was occupied by a regulated tenant who has since passed away and now this 3-bedroom flat is occupied under an Assured Short Term Tenanc (AST).

Flat C was a 3-bedroom flat. Flat D was a 2-bedroom flat. Flat E was a 2-bedroom flat. Flat F was a 3-bedroom flat.

Planning Permission (LPA Ref- 2012/6370/P) dated 07/05/2013 was granted to extend the loft above Flats C & F to enlarge them. The permission was implemented, and the works completed.

Flats C, D, E & F were converted into Class C4 HMOs and occupied in March 2018.

HMO licenses were obtained, as the accommodations used within flats C, D, E & F were all with communal bathrooms.

18 rooms in total, sharing 18 bathrooms.

HMO licences for Flats C, D, E & F were granted for 5 years on 04/03/2019 till 03/03/2024, 02/04/2019 till 01/04/2024, 27/02/2019 till 26/02/2024 & 27/02/2019 till 26/02/2024 respectively.

The Conditions attached were complied with, as necessary.

At the beginning of April 2019, it was decided to move the room locks of each of the 18 rooms from their existing position, onto doors further towards the lobby.

Mr Jarek Zurek (Caretaker/Handyman) was instructed to undertake this work and by 5 April 2019, all 18 rooms within Flats C, D, E, & F became self-contained with their own bathrooms and kitchens, all behind their "own" front door.

This change arose from requests and complaints from numerous tenants expressing their preference for exclusive use of their bathroom for various reasons.

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The Evidence supplied corroborates the relevant part of the property has been used as 18 Studio Flats continuously since 5 April 2019.

RELEVANT GUIDANCE IN DETERMING APPLICATIONS FOR CERTIFICATES OF LAWFUL USE

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The Statutory Declarations submitted provide details of why and when the original house was subdivided and confirm when the existing use as 18 Studio Flats, for which a Certificate is sought, commenced.

Unauthorised operational development, changes of use and breaches of conditions are immune from enforcement if specific periods of time have elapsed since the breach.

These periods are set out in sec.171B of the 1990 Act and refer to 4 years in the case of operational development and the creation of single dwellings and 10 years, in the case of changes of use and breaches of planning conditions.

In our submission the relevant period in the present case is 4 years.

In such cases the planning merits of the use are not material considerations.

For a certificate to be granted under section 191(2), the planning authority needs to be satisfied that, on the balance of probability, the present use as 18 Studio Flats has subsisted without significant interruption for 4 years prior to the date of the application and is now immune from enforcement proceedings.

The Statutory Declarations supplied confirm the relevant part of the property has been used as 18 Studio Flats continuously for over 4 years.

Whilst the Relevant Guidance confirms that the burden of proof is with the appellant, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability".

As this test will accordingly be applied by the Secretary of State in any appeal against an LPA decision, the LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt".

Moreover, the Court has held (see *F W Gabbitas v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence to be accepted.

If the LPA has no evidence of their 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 probability".

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The LPA should proceed on the basis that neither the identity of the applicant nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

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Planning Practice Guidance

In the case of applications for existing use, 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

CONCLUSION

Having regard to the evidence submitted and the relevant matters to be considered we conclude the relevant test for the grant of a Certificate of Lawful Development as 18 Studio Flats has been satisfied and respectfully request it be granted.

SJP/06/06/2023