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8 November 2023

Dear Bethany

**CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT  
SECTION 192(1)(A)(B) TOWN AND COUNTRY PLANNING ACT (AS AMENDED) 1990  
THE BLACK CAP, 171 CAMDEN HIGH STREET NW1 7JY**

### INTRODUCTION

On behalf of the Applicant, Kicking Horse 3 (“the Applicant”), please find enclosed an application for a Certificate of Lawfulness of Proposed Use or Development (“CLOPUD”) pursuant to Section 192(1)(b) of the Town and Country Planning Act 1990 (“the Act”) to confirm the lawfulness of the proposed use of The Black Cap, 171 Camden High Street NW1 7JY (“the Site”, “The Black Cap”).

This application seeks to establish that the works and use of the building proposed would not constitute “Development” as defined by Section 55 of the Act.

This letter should be read in conjunction with the following materials submitted as part of this application:

- Site Location Plan;
- Existing and Proposed Floor Plans; and
- Legal Opinion prepared by James Strachan KC.

### STATUTORY BASIS FOR THIS APPLICATION

Section 192 of the 1990 Act allows a person to make an application for a certificate of lawfulness in respect of proposed use or development. In respect of a proposed use or development, Section 192 (1) of the Act states:

*“(1) If any person wishes to ascertain whether—*

- (a) any proposed use of buildings or other land; or*
- (b) any operations proposed to be carried out in, on, over or under land,*

*would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question”.*

Section 192 (2) of the Act states:

*“(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application”.*

“Development” is defined in Section 55 of the Act as meaning:

*“(1) the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*

*(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land-*

*(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—*

*(i) affect only the interior of the building, or*

*(ii) do not materially affect the external appearance of the building”*

## BACKGROUND

Prior to the Site’s closure in April 2015, The Black Cap operated as a popular LGBTQ+ cabaret, public house, and dance club for a number of years. The Site has been unoccupied since the venue closed in April 2015 and has been the subject of a number of planning applications for alternative uses, as detailed in Table 1 below.

Reference	Description	Determination
2018/4031/P	Certificate of Lawfulness of Existing Use (CLEUD) for a mixed use of the premises as a cabaret/dance venue, club, bar/ community space and as a public house (Sui Generis), consisting of: use of the ground floor as cabaret dance club with bar and live performances and community uses with toilets at the rear and use of the first floor as a bar and community space (including toilets) and use of the first floor external terrace as a drinking / smoking area; with ancillary uses of the basement as storage for beer and stock, the second floor as kitchen, two offices, and two rooms of staff accommodation plus bathroom and the third floor as two rooms of staff accommodation. Basement, second and third floor uses serve the primary use of cabaret/dance venue, club, bar / community space and public house (Sui Generis)	Granted 3 <sup>rd</sup> July 2019
2014/2176/P	Change of use of first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) to provide 2x 2-bedroom units and 1x 1 bedroom unit with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level.	Refused 3 <sup>rd</sup> March 2015

2013/2301/P	Change of use of first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) to provide 2x 2-bedroom units and 1x 1 bedroom unit with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level.	Withdrawn 17 <sup>th</sup> September 2013
2013/0262/P	Change of use of part first floor, second and third floors from bar/restaurant and ancillary accommodation to residential to provide 2 x 1 bedroom flats and 1x 2 bedroom maisonette with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level.	Refused 20 <sup>th</sup> March 2013
2012/1444/P	Change of use of first, second and third floors from bar/restaurant use and ancillary accommodation to residential (Class C3) to provide 2x 2-bedroom units and 1x 1 bedroom unit with rear roof terraces at first and third floor levels and a rear balcony at second floor level, alterations to windows and doors on side and rear and creation of refuse and cycle stores for flats at ground floor level.	Appeal dismissed 4 <sup>th</sup> March 2013

*Table 1: Relevant Planning History*

## PROPOSED WORKS

The proposed works comprise the refurbishment of the existing building with some minor internal reconfiguration to enable improved access and circulation space within the venue. No works are proposed to the exterior of the building, nor the basement level or garden to the rear.

The Certificate of Lawfulness of Existing Use (CLEUD) granted by the London Borough of Camden (LBC) on 3<sup>rd</sup> July 2019 and detailed above (ref. 2018/4031/P) confirms The Black Cap is a single planning unit with a Sui Generis use. Notwithstanding that the Certificate specifies individual functions per floor. The proposed amendments to the interior of the building are required to enable the continued function of the building as a Sui Generis use, including cabaret dance venue, bar/community space and public house functions, with ancillary accommodation for acts to use (at a discounted rate) in combination with performing at The Black Cap, as well as by staff members as required, or by paying customers.

The ground floor is proposed to be retained as existing, with minor alterations to the configuration to include a unisex WC to the rear of the stage, in addition to a dressing room for performers with private WC and a shower. A general refurbishment and renewal of stage, sound, lights and bar equipment is also proposed.

At first-floor level, the layout is proposed to remain as existing, with the minor addition of a small kitchenette to the rear of the bar area to support the venue's food and drink offer.

It is proposed for the second and third floor level that ancillary accommodation space is provided for use by performers, who may otherwise not be able to afford accommodation in London, and venue staff, in the form of five double ensuite bedrooms. When not in use by performers and / or staff, the accommodation would be offered to paying guests as overnight accommodation, ancillary to the cabaret / pub function to support its income. This would enable the Black Cap to attract high-profile and 'up and coming' acts whilst also ensuring the viability and long-term future of the venue is protected.

As detailed above, a Certificate of Lawfulness for Existing Use or Development (“CLEUD”) was issued by LBC on 3<sup>rd</sup> July 2019. The Certificate establishes that the lawful use of the Site is Sui Generis, comprising mix of functions within the premises including a cabaret/dance venue, club, bar/ community space and as a public house, with ancillary accommodation provided on the upper floors.

The proposed internal changes to the Property are summarised in Table 2, as follows:

Floor	Existing	Proposed	Change
<b>Basement</b>	Storage	Storage	None
<b>Ground</b>	Lobby, toilets, bar with stage for live performances	Lobby, toilets, bar with stage for live performances	Internal reconfiguration of toilet area to rear of stage
<b>First</b>	Bar, toilets and external beer garden	Bar, toilets, kitchen and external beer garden	Internal reconfiguration of toilet area and introduction of kitchen
<b>Second</b>	Kitchen and 4 bedrooms	5 bedrooms	Introduction of an extra bedroom
<b>Third</b>	2 bedrooms	2 bedrooms	Internal reconfiguration only

Table 2: Summary of Proposed Amendments

The proposed works, as outlined above and detailed in the accompanying drawings, ensure the existing land use is unchanged, with refurbishment works proposed to provide an attractive and well-functioning space to attract top cabaret and drag performers; ensuring the success and longevity of The Black Cap.

## LEGISLATIVE CONTEXT

As discussed above, the 2019 Certificate of Lawfulness certified the lawful use of the Property under section 191(4) of the 1990 Act on 30 August 2018 as being:

*“A mixed use of the premises as a cabaret/dance venue, club, bar/community space and as a public house (Sui Generis), consisting of: use of the ground floor as cabaret dance club with bar and live performances and community uses with toilets at the rear and use of the first floor as a bar and community space (including toilets) and use of the first floor external terrace as a drinking/smoking area; with ancillary uses of the basement as storage for beer and stock, the second floor as kitchen, two offices, and two rooms of staff accommodation plus bathroom and the third floor as two rooms of staff accommodation. Basement, second and third floor uses serve the primary use of cabaret/dance venue, club, bar/community space and public house (Sui Generis).”*

The Certificate establishes that the Property is regarded as a single planning unit and, notwithstanding that the certificate identifies a variety of functions per floor of the Property, the site lawful land use is Sui Generis.

This application envisages that the primary uses of the property will remain in substantially the same form as considered by officers previously when the 2019 Certificate was granted, save for the following minor amendments, as shown below:

*“Proposed A mixed use of the premises as a cabaret/dance venue, club, bar/community space and as a public house (Sui Generis), consisting of: use of the ground floor as cabaret dance club with bar and live performances and community use with toilets at the rear and use of the first floor as a bar and community space (including kitchen and toilets) and use of the first floor external terrace as a drinking/smoking area; with ancillary uses of the basement as storage for beer and stock, the second floor as ~~kitchen, two offices, and two~~ five rooms of staff accommodation plus bathrooms and the third floor as two rooms of staff accommodation. Basement, second and third floor uses serve the primary use of cabaret/dance venue, club, bar/community space and public house (Sui Generis).”*

In respect of ancillary uses, the kitchen facility is proposed to be relocated from the second floor to the first floor of the property but would plainly continue to serve an ancillary function. As to the ancillary accommodation on the second and third floors, there is no question of this accommodation being physically separate from the primary uses and it would retain a functional relationship with the primary uses. It is proposed that this accommodation would be made available for use by:

- (i) staff (on a paying basis (including as part of their overall salary package), which was previously explicitly acknowledged as an ancillary use in the CLEUD;
- (ii) performers at the property on a subsidised paying basis, such that (in use terms) their occupation would likely be indistinguishable from staff use i.e. ancillary and, as with staff use, there would be a clear and obvious functional relationship between such use (i.e. performers staying in the accommodation) and the primary uses (e.g. the bar at which the performers would be performing); and
- (iii) paying customers on a bed and breakfast-type basis i.e. short-term. This accommodation would not be physically separated from the remainder of the property i.e. it would continue to be accessed internally via the main entrance and it would not be self-contained; there is a reasonable prospect that any such occupiers would also be patrons of the bar (on the ground floor) and/or the pub (on the first floor); and any income from use of the accommodation would be invested in securing/protecting the viability of the use of the property.

The use of the accommodation proposed would be prioritised for performers in order to attract key, high-calibre artists who otherwise would not be able to afford to perform within London; save for at least one room proposed to be reserved for staff use at all times (the costs of which would form part of their overall salary package).

Accordingly, the proposed use of the accommodation in this way would not result in any change in its ancillary function insofar as there is no prospect that it would become a separate use in its own right and/or that it would materially change the character of the use of the property. To the contrary, this accommodation would remain an incidental activity to the primary uses and the combination of uses on the property as a whole would remain substantially unchanged.

## **CONCLUSION**

It is therefore considered that the proposed internal refurbishment and uses described above and within the accompanying documentation do not involve development as defined by Section 55 of the 1990 Act. We therefore invite LBC to confirm the lawfulness of the proposed works and use through granting the Certificate of Lawfulness of Proposed Use or Development (“CLOPUD”) pursuant to Section 192(1)(b) of the Town and Country Planning Act 1990.

If you require any further information, please contact Gareth Fox ([gareth.fox@montagu-evans.co.uk](mailto:gareth.fox@montagu-evans.co.uk) / 07894 815 343) or Anna Harray ([anna.harray@montagu-evans.co.uk](mailto:anna.harray@montagu-evans.co.uk) / 07919 696 473).



Yours sincerely,

*Montagu Evans*

**Montagu Evans LLP**