



Planning Department
Camden Council
Camden Town Hall
London
WC1H 8ND

My reference:

Your reference:

17th November 2023

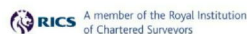
Dear Sirs

Section 191 Town and Country Planning Act 1990
49 Cotleigh Road, London, NW6 2NN
Application for a Certificate of Lawfulness of Existing Use

1. We act for the applicant, Metropole (Cotleigh Road) Ltd, Company Number: 08345093. Mr. Farid Shamash Founder of the Metropole (Cotleigh Road) Ltd has led in respect of this lawful use application.
2. We enclose 4 Statutory Declaration with the respective exhibits, and the following documents:
 - A Statutory Declaration of Margaret Taha, Director of Metropole Properties Ltd with the exhibits listed as:
 - a. MT1 – Location Plan and floor plans of current layout of the 6 flats;
 - b. MT2 – Tenancy Agreements and Statutory Declarations from tenants, Sara Tesfu and Andrew O'Neill;
 - c. MT3 – Property valuations from 2012 and 2013 with plans, layouts and internal photos of the 6 flats;
 - d. MT4 – Photos of the doors of the separate 6 flats;
 - e. MT5 – Internal photos of the 6 flats;
 - f. MT6- Council Tax bills for the flats;
 - g. MT7 – Rental schedules for the flat numbers 1-6;
 - h. MT8 - HB documents for the separate flats;
 - i. MT9 a, b and c- Statements of Account and bank statements for each of the flats;
 - j. M10- Insurance letters for 6 separate flats for period 2/07/20 – date;
 - k. M11 – EPC documents for the 6 separate flats;
 - l. M12- HMO license application dated 09/02/18 from Camden Council;
 - m. M13 - Statement of Mohammad Ali (a handyman) to support application;
 - n. MT14 – A petty cash voucher dated 15th August 2019; and
 - o. MT15 – Window display for marketing of Flat 5.

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- A Statutory Declaration by Farid Shamash, Director of Metropole (Cotleigh Road) Ltd with the exhibits listed as:
 - a. FS1 – Title Plan;
 - b. FS2 – Location Plan, floor plans and current layout of the 49 Cotleigh Road;
 - c. FS3 – A letter from PINS dated 15.03.2011;
 - d. FS4 – Separate ASTs and Statutory Declarations of Sara Tesfu and Andrew O'Neill;
 - e. FS5 – Property valuations of the 6 flats from 2012 and 2013 with plans, layouts and internal photographs;
 - f. FS6 – Photographs from outside of the properties showing separate doors;
 - g. FS7 – Photographs from inside the 6 flats;
 - h. FS8 – Council Tax bills for the flats;
 - i. FS9 – Rental Schedule from Metropole Properties Ltd for each of the flats;
 - j. FS10 -HB documents for the separate flats;
 - k. FS11 a, b and c- Statements of Account and bank statements for each of the flats;
 - l. FS12- Insurance letters for 6 separate flats for period 2/07/20 – date;
 - m. FS13 – EPC documents for the 6 separate flats;
 - n. FS14- HMO license application dated 09/02/18 from Camden Council; and
 - o. FS15 - Statement of handyman to support application;
 - p. FS15a – Petty Cash Voucher dated 15th August 2019;
 - q. FS16 – Window display for marketing of Flat 5.
 - A Statutory Declaration by Ms Sara Tesfu – a previous tenant at flat 1; and
 - A Statutory Declaration by Andrew O'Neill – a previous tenant at the flat 2.
3. The application for a Certificate of Lawfulness in respect of 49 Cotleigh Road, London NW6 2NN (the, "Property"). The application is being submitted due to overwhelming evidence that the applicant is entitled to a certificate of lawfulness under section 191(2) of the Town and Country Planning Act 1990 on the basis that flat 49 Cotleigh Road shown within the red line of the application site shown on the Site Location Plan has been used as 6 separate self-contained dwellings under Class C3.

Legal Basis

4. We are seeking to obtain a Certificate of Lawfulness for the C3 Use for 49 Cotleigh Road. To secure such a certificate we need to prove that the six flats at 49 Cotleigh Road has had continuous C3 use, separate for at least 6 years prior to the date we submit the application. The legal basis for this is contained in the following provisions:

Planning and Compensation Act 1991, Part 1 (10): Certificate of lawful use or development:



"(1) For sections 191 to 196 of the principal Act (established use certificates) there is substituted....

191. Certificate of lawfulness of existing use or development

....

(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 use."

5. In terms of the time limits for enforcement action, the **Planning and Compensation Act 1991, Part 1 (6)**: Time limits on enforcement action states:

"....

171B: Time limits

...

*(2) 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 **six years** beginning with the date of the breach" [emphasis added].*

6. It is important to note that although it is the applicant who is responsible for providing sufficient information in support of an application, according to the Planning Practice Guidance, *"a local planning authority always needs to cooperate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, **this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.**"*
7. Further, *"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 a certificate on the balance of probability. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local authority to understand exactly what is involved."* (Paragraph 006 Ref ID: 17c-006-20160306).
8. It follows from the above Planning Practice Guidance that there are two steps to determining the correct outcome for the application:



1. The applicant has a duty to provide evidence that meets the policy test of being, “sufficiently precise and unambiguous”; AND
 2. The LPA can then if it wishes, introduce its own evidence/canvass evidence from others but if the evidence from the applicant does not contradict or make the applicant’s case less than probable, there is no reason for the LPA to refuse the application.
9. If the council does have further evidence against the applicant it needs to share the said evidence with the applicant before any decision is taken, to enable the applicant to comment on the evidence or provide counter evidence.
10. The 6 flats at 49 Cotleigh have been in physically and functionally separate C3 use for more than 4 years. The copies of tenancies, Statutory Declarations and other evidence listed above, confirm continuous occupation of the flat as a separate C3 unit.
11. The applicant has addressed each leg of the evidence needed for approval of this application in turn:

a) Evidence of Occupation for at least 4 Years Continuous Separate C3 Use for the 6 Flats

12. The order of occupation for each of the flats is as follows:

Flat 1

This flat has been occupied by Ms Tesfu since 2011 to date on a statutory periodic basis. A statutory declaration from Ms Tesfu and Margaret Taha, Director of Metropole Properties Ltd who have managed this property are provided.

Flat 2

This flat has been occupied by Andrew O'Neill since January 2010 to date on a statutory period tenancy. A statutory declaration from Mr. O'Neill and Margaret Taha of Metropole Properties Ltd who have managed this property are provided.

Flat 3

Tenancy Schedule:

2017- 05.05.21 Mr Khalil Tamimi

05.05.21 – 31.05.21 Unoccupied, tenant changeover.

01.06.21-Now Mr Ghazi Tami. This was a statutory periodic tenancy. The Statutory Declaration from Margaret Taha of Metropole Properties confirms this.

Flat 4



Tenancy schedule:

26.10.2009 – 13.08.2019 Mr Mathew Moran

14.09.2019 – 10.05.2020 flat unoccupied but furnished as stated in the Council Tax bill provided. The flat was left in a very bad condition so it needed renovation, cleaning and painting which was done by our handyman (see statement at **Exhibit FS15**) about doing the work in the flat. After the decoration when the flat was ready to let, the Covid started and it was very difficult to rent out the flat so it took time.

11.05.2020 to date Mr Ajjaj Abbas El-Enezi

Flat 5

Tenancy schedule:

23.07.2018 – 23.06.2019 Mr Badar Hussein

24.06.2019 – 05.09.2019 flat unoccupied. Petty Cash Voucher dated August 2019 for painting, redecorating and repairs provided in the file "Purchase Invoices".

06.09.2019 – 06.02.2020 Mr Abdul Shameri

07.02.2020 – 01.03.2020 flat unoccupied, between tenancies

02.03.2020 – 02.04.2021 Mr Hussain Alshamary

03.04.2021 – 08.08.2021 flat unoccupied – Council Tax bill provided. The flat was unoccupied for the above period due to pandemic season and difficulty finding a new tenant. Please find attached the window display (**Exhibit FS16**) as a proof that we were actively looking for a tenant which finally happened in August after reducing the price.

09.08.2021 – 09.12.2022 Mr Falah Alshamary

09.12.2022 up to date Ms Bedour Hissiny

Flat 6

Tenancy schedule:

09.09.2009 – 08.10.2019 Mr Mark Williams

09.10.2019 – 15.01.2020 flat unoccupied but was being redecorated/remarketed – Council Tax bill provided. There is also an invoice for new oven, washing machine and fridge in the folder "Purchase invoices".

16.01.2020 – 13.08.2020 Mr Muafuq Zahawi

14.08.2020 – 03.09.2020 flat unoccupied, between tenancies – Council Tax bill provided.

04.09.2020 – 04.05.2021 Mr Badr Albadr

04.05.2021 – to date Mr Adnan Kisserwan

13. We would like to point out that from 14.09.2019 – 10.05.2020 flat 4 was unoccupied. The Property was left in a very bad decorative state and required extensive renovation works (see **Exhibit FS16** – a statement from the handyman who did the works at Flat 4). The flat was remarketed during this time but due to Covid it took longer than usual to let the

Property out. It was then let to Mr Ajjaj Abbas El-Enezi from 11.05.2020 who is still in occupation on a statutory periodic basis.

14. It is, therefore, more accurate to say the Property was undergoing refurbishment during this time with the future intention of multiple occupation. In fact, although the appellant carried out works to flat 4 it was never registered as part of a HMO. The appellant has provided very clear evidence as to the occupation of the Property. Both the Statutory Declaration of Mr Farid Shamash and Margaret Taha as well as the statement of the handyman, Mohammad Ali confirm our client's evidence.
15. There were a number of other remarketing breaks in occupation as detailed in the tenancy schedules for each flat above. These were short gaps of a few months on each occasion. We would like to direct the LPA's to the case of ***Impey v Secretary of State for the Environment: (1986) 67 P and CR 157*** which does not require an actual occupation if the Property is, "useable for residential purposes".
16. In this case the owner of a dog kennel carried out works both internal and external to change the building into two residential units. The Council served an improvement notice. The respondent found that no material changes of use had yet taken place. It was held that the change of use could take place before the building was used for the new use. Both the physical state of the premises and the owner's intentions could be considered.
17. The question before the court was whether development had occurred in the form of a material change of use of a building from the breeding of dogs to residential use. ***Donaldson LJ*** clarified:

"Change of use to residential development can take place before the premises are used in the ordinary and accepted sense of the word, and [counsel] gives by way of example cases where operations are undertaken to convert premises for residential use and they are then put on the market as being available for letting. Nobody is using those premises in the ordinary connotation of the term, because they are empty, but there has plainly, on those facts, been a change of use"

The question arises as to how much earlier there a change of use can be. Before the operations have begun to convert to residential accommodation plainly there has been no change of use, assuming that the premises are not in the ordinary sense of the word being used for residential purposes. It may well be that during the course of the operations the premises will be wholly unusable for residential purposes. It may be that the test is whether they are usable, but it is a question of fact and degree".
18. It is therefore acceptable for short breaks in the occupation of let properties.

b) Lawful Change of Use Application from One to Six Dwellings

19. In submission of this Certificate of Lawfulness, the appellant is seeking to legalise the change of use from one to six dwellings in respect of 49 Cotleigh Road. The evidence the appellant has provided in very clear terms proves that 6 separate flats exist.



20. Further, the appellant has proven the lawful C3 Use for at least 4 years by the provision of tenancy agreements or Statutory Declarations from previous tenants. A senior employee of Metropole Properties Ltd, who have overseen the management of the tenancies over the relevant 4-year period have also provided sworn evidence in respect of the layout and letting history of the Property. The appellant has therefore, proven the case for a Certificate of Lawfulness for C3 use for continuous 4 years.

c) Sufficient, “unambiguous and precise” Information to Prove the Site has had Separate Use for 6 years

21. The evidence provided is crystal clear evidence proving continuous C3 use of the Property as 6 separate flats at 49 Cotleigh Road. The tenancy agreements from the tenants and the evidence sworn on oath along with the following evidence:

- a. Title Plan;
- b. Location Plan, floor plans and current layout of the 49 Cotleigh Road;
- c. Title Plan and letter from PINS dated 15.03.2011;
- d. Email regarding remortgage of 6 flats dated 2013;
- e. Sales particulars, plans and valuation of the 6 flats;
- f. Photographs from outside of the properties showing separate doors;
- g. Photographs from inside the 6 flats;
- h. Council Tax bills for the flats;
- i. Rental Schedule from Metropole Properties Ltd for each of the flats;
- j. HB documents for the separate flats;
- k. Statements of Account and bank statements for each of the flats;
- l. Insurance letters for 6 separate flats for period 2/07/20 – date;
- m. EPC documents for the 6 separate flats;
- n. HMO license application dated 09/02/18 from Camden Council; and
- o. Statement of handyman to support application; and
- p. Window display for marketing of Flat 5.

shows the 6 flats as being advertised as separate standalone residential units, is sufficiently, “unambiguous and precise” evidence. This evidence proves that the 6 flats at 49 Cotleigh Road have both physical and functional separate use for at least 6 years.

d) Proof of Separate Occupation with Bills, Tenure and Further Evidence

22. The proof of occupation required by way of bills, tenure and other relevant evidence has all been provided. The application for Certificate of Lawfulness for C3 use of the Property for 6 continuous years should, therefore, be allowed without further delay.

23. Therefore, the appellant has now shown that the 6 units at 49 Cotleigh Road have had both a physical and functional C3 use for at least 4 years during the relevant period. The sworn evidence must be given it's due weight. The short remarketing breaks do not break the continuity of the occupation and it is reasonable to consider a few-month period as a reasonable and, “allowable” break in occupation, in which new tenants are sought. Metropole (Cotleigh Road) Ltd has shown that there has been a 4-year continuous use of the 6 flats at the application site and such a use is now lawful under Section 191 of the Town and Country Planning Act 1990.



24. In conclusion, we submit that the applicant has provided enough evidence to prove the lawfulness of the existing use and should be granted the Certificate of Lawfulness.

Please contact Ghazala Hussain on [REDACTED] if you require any further information.

Yours faithfully

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(*non-practising member)