

Delegated Report		Analysis sheet	Expiry Date:	N/A
		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Ewan Campbell			2024/1048/P	
Application Address			Drawing Numbers	
Churchill House 35 Red Lion Square London WC1R 4SG			Refer to Draft Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Use of the basement to eighth floor of the building as an mixed institution use (sui generis).				
Recommendation(s):	Grant Certificate of Lawfulness (Existing)			
Application Type:	Certificate of Lawfulness (Existing)			
Conditions or Reasons for Refusal:	Refer to Draft Decision Notice			
Informatives:				

Site Description

The Site comprises an 8-storey building which is occupied by the Royal College of Anaesthetists. The Site lies between Theobalds Road, Drake Street and Red Lion Square.



The Site lies within the Central London Area and Holborn Growth Area (as designated by the Camden Local Plan, 2019) and is wholly within the Central Activities Zone (under the London Plan, 2021). The Site is located within an accessible location, and within the setting of the Bloomsbury Conservation area, albeit it is not in a Conservation Area itself.

There is currently an article 4 direction in place at the Site which removes the permitted development (PD) rights for the change of use from Class E to residential use (Part 3 Class MA).

Relevant History

APPLICATION SITE:

2007/3825/P Installation of new kitchen extract fan and plant enclosure and retention of existing plant and associated works. **Granted 15/08/2007**

2006/2586/P Retention of plant comprising 3x air handling units and 1x kitchen extract unit on the rear flat roof at 1st floor level and erection of a new acoustic screen on top of the existing screen to the rear (east) edge of the roof of the office building **Withdrawn 18/08/2006**

2004/3744/P Additions and alterations to an existing office building including an extension to part 6th and part 7th floor levels, including alterations to the entrance and recladding of external facades, together with the relocation of 6th floor roof plant. **Granted 10/09/2004**

9400902 Basement, 4th, 5th, 6th, 7th & 8th floors Certificate of Lawfulness for existing use as offices and storage for the basement 4th 5th 6th 7th & 8th floors within Class B1 of the Town and Country Planning (Use Classes) Order 1987. **Granted 13/06/1994**

A certificate of lawfulness application above (ref. 9400902) was granted in 1994 to confirm the basement, 4th, 5th, 6th, 7th, and 8th floors were used as offices (Use Class B1) and storage. The certificate submission references a historic planning permission granted in March 1951 for the erection of an office building of up to 10 storeys on the site known as 75 Theobalds Road and 35/36 Red Lion Square. For clarity, RCoA occupied the building in 2006 and required the additional kitchen extract fan/ plant enclosure for the updated functioning of the building. It is acknowledged that the officer's report for application ref. 2007/3825/P refer to the building as "8-storey office building (Class B1) occupied by the Royal College of Anaesthetists", and the description of development also describes the building as being in office use. This description was made as the Applicant started to occupy the building and it was not an accurate description of how building either was to be used or how it has been used since that time. The configuration and lawful use of the building is set out in further detail below.

Assessment

Background

The certificate seek to demonstrate that 35 Red Lion Square has been in existing use as Institutional use (Sui Generis) for at least a period of 10 years (commencing in 2006) and is therefore lawful. 35 Red Lion Square is accessed solely from the front entrance and there is no separate entrance/access to allow access to the upper levels and the property is therefore classed as one "planning unit".

Applicant's Evidence

1. Signed statutory declaration
2. Floor plans
3. Sales invoices
4. Event brochures
5. Website extracts
6. Appendices summary document
7. Cover letter (07/03/2024)

Council's evidence

Judging the evidence submitted and the history of the site, officers are satisfied that the use as a mixed institution use (Sui Generis) commenced over 10 years ago pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

Assessment

The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (Planning Practise Guidance para. 006), Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the "balance of probability", and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, 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. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

The first question is in regards to the use and how the building operates. The evidence provide demonstrates that the building has not been operating as a typical office use, providing more functions and services that are more akin to an institutional use. It is clear from the website extracts and sales brochures that building provides lectures, workshops and educational courses that fulfil the needs of the Royal College of Anaesthetists. The sales invoices also demonstrate that the building also provides events within the medical field. The floor plans provide also demonstrate that the building has designated spaces to accommodate these type of functions and uses within the building. Whilst there are some designated office areas listed, these are seemingly ancillary and directly related to the institutional use but does not provide the main use of the building.

The next question is whether or not this use has operated for a continuous period of ten years or more. From the evidence provided, including the statutory declaration and website extracts, on the balance of probability, the Royal College of Anaesthetists began their tenancy of the building in 2006 and therefore the use began at this point too.

Overall, therefore, it is considered that the information provided by the applicant is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, all floors of the building have been in use as a mixed institutional use (Sui Generis) since at least ten years before the date of this application and have continued to do so until the present time.

This being the case, and given the fact that the Council does not have any evidence to contradict or undermine the applicant's version of events, the use of the whole of the property as a mixed institution (Sui Generis) is lawful and would not require planning permission. In this respect, it is recommended that a Certificate of Lawfulness be granted.

Conclusion

Recommendation: Grant Certificate