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Via Planning Portal Only

5th December 2024

Dear Sir/Madam

CERTIFICATE OF LAWFUL DEVELOPMENT (EXISTING) WITH RESPECT TO THE LAWFUL EXISTING C3 OF THE BASEMENT AND PART OF THE GROUND FLOOR OF 273 EVERSHOLT STREET, LONDON, NW1 1BA

This is an application under Section 191 (1) (b) of the Town and Country Planning Act 1990 to obtain a Lawful Development Certificate to confirm that the lawful existing C3 (residential) use of the basement and part of the ground floor of No. 273 Eversholt Street. The existing flat is lawful by virtue of the residential use having taken place for a period in excess of 10 years, prior to the date this application was submitted.

The following documents are submitted in support of the application:

- Completed application form;
- Site location plan;
- Existing floorplans;
- Sworn Affidavits from the occupier of the property and members of staff of the ground floor commercial unit.

Supporting Evidence:

- Appendix 1 – Statutory Declaration Dated 22nd of November 2024.
- Appendix 2 – Statutory Declaration Dated 26th of September 2024.
- Appendix 3 – Statement of Truth Dated 21st of February 2024.

The Site

The site is located on the southwestern side of Eversholt Street, to the south of the junction with Millbrook Place. The site comprises a 4 storey building plus basement that is currently in commercial and residential use. This application relates solely to the basement and the rear part of the ground floor which has been used as a residential dwelling (C3 use class) for at least 10 years prior to the date that this application was submitted.

The site is on a street comprised of similar commercial/residential properties. The site lies within the Camden Town Conservation Area.

Planning History

On the 9th of June 1986, planning permission was granted for the conversion of upper 4 floors into 2 self-contained 1-person flats and 1 self-contained 4 person maisonette including the enlargement of the attic floor.

On the 27th of October 1987, planning permission was granted for the retention of a new shop front and an extract duct at rear.

On the 16th of March 1988, planning permission an application was withdrawn for various alterations including opening out balcony to the front sloping door to balcony access to roof railings round roof terrace.

On the 22nd of March 1988, an appeal was allowed for the display of Fret cut lettering fascia level illuminated from above by spotlights, illuminated menu board, projecting sign with illuminated neon lettering measuring 850mm by 600mm attached to northern pilaster.

Legislative Background and Guidance

Section 191 of the Town and Country Planning Act 1990 (as amended)

Section 191 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) allows applications to a Local Planning Authority for the issue of Certificates of Lawful Use or Existing Development. This provides a statutory mechanism for obtaining confirmation that an existing use

of land, operational development, or activity in breach of a planning condition, is lawful and consequently immune from enforcement action.

Section 171B (1) of the Town and Country Planning Act 1990 (as amended)

Section 171B (1) of the Town and Country Planning Act provides for the 'ten year rule' in respect of operational development. It states:

“(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 in the case of a breach of planning control in England, ten years beginning with the date of the breach”

Therefore, if it can be demonstrated that the works were substantially completed more than ten years prior to the submission of this certificate application, then the development is lawful, and a certificate should be issued.

Planning Practice Guidance Paragraph 009

Planning Practice Guidance at paragraph 009 (Reference ID: 17c-009-20140306), states:

“A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.”

In light of the above, a certificate of lawful use or existing development is not a planning permission. The planning merits of the use, operation or activity in the application are not therefore relevant and planning policies are thus not applicable. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The test in this instance is whether 'on the balance of probability' the applicant has demonstrated that the development was carried out and substantially completed more than ten years prior to the submission of this certificate application.

The lawfulness of the existing development

As outlined above, the application is not to be considered against local or national planning policy. The question to ask is whether the applicant has demonstrated, on the balance of probability, that the development occurred more than ten years prior to the submission of this certificate application.

The 'balance of probability' threshold was previously set out in Circular 10/97 (now cancelled), but that threshold is repeated in current Planning Practice Guidance. Further, case law dictates that an applicant's own evidence does not need to be corroborated by "independent" evidence to be

accepted (FW Gabbittas v SSE and Newham LBC [1985] JPL 630). If the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the applicants 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."

As set out in the statutory declarations dated 22nd of November 2024, the basement and rear part of the ground floor have been continuously occupied as a residential dwelling (C3 use class) for at least the past 12 years (Appendix 1). Further declarations from a tenant, dated 26th of September 2024 and a member of staff at of the commercial unit of the building, dated 21st of February 2024, corroborate that the use of part of the ground and the basement level of the building as a residential dwelling (Appendix 2 &3). On the balance of probability, the basement and rear part of the ground floor of 273 Eversholt Street was substantially complete and been continuously in use as a residential dwelling (C3 Use Class) for at least 10 years prior to the date this application was submitted. The dwelling has therefore become lawful through the passage of time.

Summary & Conclusion

The evidence submitted demonstrates that part of the ground floor and the basement of no.273 Eversholt Street has existed in residential use for more than ten years before the submission of this lawful development certificate application.

Accordingly, the requirements of s.191(2)(a) are satisfied (lawfulness through expiry of time), and any refusal from the Council would be unfounded. It is therefore respectfully requested that a certificate is issued.

I trust the commentary above is clear but please do not hesitate to contact me if you have any queries or if I can offer any further points of clarification.

Yours faithfully



Stuart Minty
Director
SM Planning