

10<sup>th</sup> January 2013

Our Ref: P-12-411

Head of Development Control & Planning Services,  
London Borough of Camden  
Town Hall Extension, Argyle Street  
London WC1H 8EQ

Dear Sirs

**99 GOWER STREET, LONDON, WC1E 6AA**  
**APPLICATION BY CENTRAL COLLEGE LONDON FOR A LAWFUL DEVELOPMENT**  
**CERTIFICATE TO CONFIRM THE EXISTING USE OF THE BUILDING AS 'MIXED USE' CLASS**  
**B1A/D1**

**1. Introduction**

We act on behalf of Central College London ('CCL') and are instructed to submit an application for a Lawful Development Certificate (LDC) in respect of the above building. CCL is currently based in premises at Ealing London W5 and are looking to acquire a lease over the subject property. It is intended to continue use the application building for a mix of teaching and administration and the purpose of this application is to confirm the existing use for such purposes.

**2. Background**

The London School of Hygiene & Tropical Medicine ('LSHTM') owned and occupied this Grade II listed building up until late 2009 and used it for teaching/seminars; its computer centre for student use; and administrative purposes. The LSHTM had been using the building in this way since at least July 1997 when, as we understand it, they acquired the freehold from the owner, having previously been the leasing occupier for many years before then (one of the supporting documents attached to this application is a schedule of selected LSHTM research papers emanating from the application address and it will be seen that one of these research papers dates from 1991). In 2009 the LSHTM determined that the building was surplus to requirements and the freehold was marketed. Upon its acquisition by the current owner in October 2009 the LSHTM vacated, and the building has been empty since then. The new freeholder has recently refurbished the building and has been actively marketing the premises in the meantime.

Despite the long-term occupation of the subject building by the LSHTM (see next section) there is no definitive information regarding the authorised use of the premises. The Planning Register carries reference to a previous attempt to clarify the building's status in July 2009 (ref 2009/3585/P). That application was submitted by another educational user who at the time was considering acquiring a lease of the soon to be vacant premises. However, the application was refused because, in the planning officer's opinion, the case for the certificate had not been adequately proven. Most crucially the previous applicant had failed to provide sworn statements to support its application. Because of this refusal the letting to this occupier did not proceed.

### **3. Background**

The matter of the lack of sworn statements highlighted by the previous application has been re-examined and the current Applicant has traced two individuals who were familiar with this building whilst it was in use by the LSHTM - Mr Benson (the Secretary and Director of Resources and Planning) and his colleague Ms Huttly (Dean of Studies). Their affidavits are attached as supporting information to this application and it should be noted that these statements were given voluntarily in order to assist the Council as the LSHTM has had no financial interest in the subject building for about three years.

#### **a. The Affidavit of Mr Richard Benson**

Mr Benson has had various posts at the LSHTM since October 2005 and states that from both personal knowledge and that of previous members of staff for at least twelve years the building was used for a range of activities linked to the provision of education. He has produced floor plans of the building showing the disposition of uses during the LSHTM's occupation as well as a letter giving a break-down of the floorspace by activity (see Exhibits 'RB2' & 'RB3') and it can be seen that the majority of the Ground, First and Second floors were used for teaching and seminars and/or computer training. The remainder of the building's other rooms were in use for other administrative purposes associated with the LSHTM. An inspection of the premises shows that the three areas used by the LSHTM for teaching comprise the most versatile and usable space, being the entirety of the modern extension having level floorplates.

Finally, Mr Benson's Exhibit 'RB4' is a note from the LSHTM to its students regarding where they could access computer and printing services. It will be noted that this general access was only afforded when the rooms were not otherwise in use for teaching purposes.

#### **b. The Affidavit of Ms Sharon Huttly**

Ms Huttly has been a member of the LSHTM's teaching staff since 1983 and like Mr Benson is able to state that from personal knowledge for at least twelve years the building was used for a range of activities linked to the provision of education. Her Exhibit 'SH2' is the floor plans of the building showing the disposition of uses during the LSHTM's occupation. Again it can be seen that the majority of the Ground, First and Second floors were used for teaching and seminars and/or computer training. The remainder of the building's other rooms were in use for other administrative purposes associated with the LSHTM. An inspection of the premises shows that the three areas used by the LSHTM for teaching comprise the most versatile and usable space, being the entirety of the modern extension having level floorplates.

Finally, Ms Huttly's Exhibit 'SH3' is a note from the LSHTM to its students regarding where they could access computer and printing services. It will be noted that this general access was only afforded when the rooms were not otherwise in use for teaching purposes.

### **4. The Government's Position Regarding Applications For Lawful Development Certificates**

Relevant advice is given to local planning authorities in Circular 10/97 *"Enforcing Planning Control: Legislative Provisions and Procedural Requirements"* and its accompanying 1997 document *"Enforcing Planning Control Good Practice Guide"*.

Circular 10/97 deals with applications for lawful development certificates at Annex 8 and the statement is made at paragraph 8.12 that the planning register is not always a complete record of the planning status of every piece of land within a local planning authority's area and *"in many cases, the applicant... will be best placed to produce information about the present, and any previous, activities taking place on the land..."*. Whilst the *"onus of proof"* might be upon the applicant in an application for an LDC, the *"Relevant Test of The Submitted Evidence"* is set out at paragraph 8.15 of the Circular (as well as at paragraph 6.19 of the accompanying Good Practice Guide), as being *"on the balance of probabilities"*, rather than the more rigorous test of *"beyond reasonable doubt"*. Paragraph 8.15 of the Circular continues *"if the LPA have 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"*.

In the context of this particular application (and the Council's previous refusal of an LDC in 2009), it is also important to note the Government's statement, also in paragraph 8.12, that:

*"The fact that a LDC may be refused because the onus of proof is not discharged by the applicant does not preclude the submission of a further application if better evidence is subsequently available. A refusal to issue a LDC is therefore not necessarily conclusive that something is not lawful: it may merely mean that, so far, insufficient evidence has been presented to satisfy the LPA that the use, operation or activity is lawful"*.

## **5. Analysis of the Evidence In The Light Of The Government Policy**

In this case *"precise and unambiguous"* conclusive evidence has now been obtained which was not available to the former applicant in 2009. The evidence of the two sworn statements meets the test for the 'burden of proof' and clearly shows that the entirety of the modern extension was in continuous use for Class D1 educational purposes from at least 1997 (some of the Applicant's accrued evidence would suggest that the use began long before that in 1991).

The application building has not been occupied for any other purpose since the LSHTM's departure in October 2009, and when that occupier vacated the use was not abandoned (as a matter of law a use is not abandoned merely because the building has fallen empty. The Courts having held that in order to abandon a use there has to be a deliberate intention to do so. Because of the nature of the activities that the LSHTM carried out from the premises these could be readily reinstituted without physical changes at any time.

## **6. Application Content**

Constituting the application we enclose the following documentation:

- The completed application forms;
- Site location plan at 1:1250 scale (Drawing No. P-12-411);
- Affidavit and exhibits of Richard Benson Secretary and Director of Resources and Planning at the LSHTM dated 20th December 2012;

- Affidavit and exhibits of Sharon Huttly the Dean of Studies at the LSHTM dated 20th December 2012;
- List of research papers showing the application address in occupation by the LSHTM since at least 1991;
- Existing floor plans of the building, dated 12.08.09 (Drawing Nos 3130-1 & 3130-2A) at 1:50 scale;
- A cheque for £385 in respect of the relevant application fee.

Although this is not an application that would attract any liability for Mayoral Community Infrastructure Levy (MCIL) we note from the Council's website that even applicants for lawful development certificates are required to submit a completed form. In the interests of prompt registration we therefore enclose the requisite papers.

## 7. Concluding Remarks

The Applicant is keen to occupy this historic building, but must resolve any uncertainties over planning matters before committing to this location.

The deficiencies of the 2009 application have been addressed within this submission with the assistance of those associated with the building when it was in use for educational and administrative purposes. We have found no contradictory evidence which would refute these statements and (as far as we are aware) the Council would have no *"good reason"* to refuse this application. Because the test of the burden of proof has been satisfied, we request that the Applicant's Lawful Development Certificate be granted.

If you should wish to discuss this further please contact Michael Fearn at the above address.

Yours faithfully



**Michael Fearn of Shireconsulting**

On behalf of **CENTRAL LONDON COLLEGE**