

CE/JD/P4709
14th August 2012

London Borough of Camden
Development Control and Planning Services
Town Hall
Argyle Street
London
WC1H 8ND

Planning Portal: PP-02130600

Dear Sirs

**Town and Country Planning Act 1990
First Floor, 8-10 Neal's Yard, London, WC2H 9DP
Certificate of Lawfulness of Existing Use**

On behalf of our client Shaftesbury Covent Garden Ltd, please find enclosed an application for a Certificate of Lawfulness of Existing Use with regard to the use of the first floor of the Property as ancillary seating accommodation for the primary restaurant (Class A3) use on the ground floor.

The Applicant is entitled under S. 191 of the Town and Country Planning Act 1990 to seek a Certificate of Lawful Existing Use or Development (CLEUD) by the submission of evidence relevant to the case to seek confirmation of the lawful use of the land in question. The evidence should establish both the factual position of the use of the land/property for a period of 10 years or more and prove the lawfulness of the use in planning terms. It is important to distinguish between the determination of a CLEUD and other planning-related applications. Unlike the latter, which may be open to subjective opinion, the determination of a CLEUD application must be based upon factual evidence and relevant Planning Law. The onus of proof is held to be with the applicant in the submission of sufficient evidence. However, paragraph 8.15 of Annex 8 of Circular 10/97: Enforcing Planning Control states that:-

"Where the burden of proof is on the Appellant, the Courts have held that the relevant test of the evidence on such matters is the 'balance of probability'. As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely 'beyond reasonable doubt'."

The Circular goes on to state that the applicant's evidence does not require independent corroboration in order to be accepted. Provided that the Local Planning Authority has no evidence of its own or from others to contradict "or otherwise make the applicant's version of events less than probable" and, provided that the applicant's evidence is sufficiently precise and unambiguous, the certificate should be granted on the balance of probability. The Circular also importantly confirms that:

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"The Local Planning Authority should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application".

Site Location and Proposal

The property is located within Neal's Yard in the Seven Dials. Neal's Yard is a pedestrianised courtyard situated between Monmouth Street, Shorts Gardens and Neal Street. The property comprises a ground floor with three upper floors. The ground and first floor are currently in restaurant use (Neal's Yard Salad Bar), the second and third floors comprising office use.

Background

Planning permission was granted on 9th December 1994 for the 'Change of use of the ground floor from retail (Class A1) to a shop for the sale of hot food (Class A3) and the installation of a new shopfront and the erection of a ventilation duct' (PL/9400323/R3). The permission was a personal consent.

Planning permission was granted on 25th September 2000 for the 'Dual use of the ground floor for either retail (Class A1) or Food & Drink (Class A3 purposes)' (PSX0004601/R1). This permission removed the personal condition to allow any tenant to implement the dual A1 or A3 use. The Class A3 (restaurant) use was implemented. The dual use permission expired in September 2010 with the premises in Class A3 restaurant use. The premises therefore retained a lawful restaurant (Class A3) use.

On 19th March 2001 planning permission was granted for the 'Change of use of the first floor from office to dual use for office (Class B1) or retail (Class A1) purposes' (PSX0104045). As part of the change of use, the scheme drawings illustrated a new stairs to link the ground and first floors.

On 15th April 2002, building control was granted to link the ground and first floor units via a new staircase (ref: 02/2/0129). Following the installation of the new stairs, the first floor of the property has been used as a sit down seating area in association with the primary ground floor restaurant.

Evidence of Use

Our client has been the freeholder of the property for over 15 years. They are therefore intimately acquainted with its occupation and use over the last ten years.

- A Statutory Declaration from Mr Tom Welton, Director at Shaftesbury PLC, dated 7th August 2012 indicates that the first floor has been utilised as ancillary seating accommodation for the primary restaurant (Class A3) use for over ten years.
- The 2002 building control application confirms that the ground and first floor has been linked since April 2002.
- In addition, plans prepared in 2005 in support of a licensing application illustrate that the ground and first floor restaurant is linked via the staircase.
- We enclose photographs taken in January 2012 of the first floor restaurant seating area and staircase.

In conclusion, it is sufficiently evident from the documentation submitted that on the balance of probability, the use of the first floor of 8-10 Neal's Yard has been used as ancillary seating accommodation for the primary restaurant (Class A3) use on the ground floor.

It is therefore considered that an acceptable body of evidence to substantiate the burden of proof and that on the balance of probability, having weighed all of the available evidence, the application should be supported and a Certificate of Lawful Existing Use should be granted to establish the use of the first floor as restaurant (Class A3) in connection with the ground floor.

We trust that the information submitted is sufficient for the application to be registered and considered by the Council. We have also submitted via post the requisite planning fee of £170. Should it be necessary to provide any additional information in support of the application, please do not hesitate to contact the undersigned.

Yours faithfully



Claire Evans
Rolfe Judd Planning Limited