

<b>LDC Report</b>		09/08/2012	
<b>Officer</b>		<b>Application Number</b>	
John Nicholls		2012/3144/P	
<b>Application Address</b>		<b>Recommendation</b>	
1 & 1a Montague Street London WC1B 5BP		Grant Certificate	
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>	
<b>Proposal</b>			
Use of the premises for office (class B1) purposes			
<b>Assessment</b>			
<p><b>Relevant planning history</b></p> <p><b>8570073</b> Listed building applications for the adaptation and refurbishment including the erection of a lift on the gable end of number 1A with breaches in the party wall between the two buildings – Granted - 07/01/1986</p> <p><b>8600572</b> Planning application for the erection of a lift on the gable end of No. 1A Montague Street as part of the works adaptation and refurbishment of Nos. 1/1A Montague Street for the Medieval and Later Antiquities Department of the British Museum – Granted - 03/06/1986</p> <p><b>2010/4973/P</b> Use of the premises for office (class B1) purposes – Withdrawn 23/11/2010 as it was considered that there was insufficient evidence to demonstrate that the legal use of the properties were ancillary to the British Museum as opposed to independent office uses.</p> <p><b>Associated planning applications</b></p> <p><u>8-11 Montague Street</u> <b>2010/4966/P</b> Use of the premises for B1 (office) purposes – Withdrawn 23/11/2010 as it was considered that there was insufficient evidence to demonstrate that the legal use of the properties were ancillary to the British Museum as opposed to independent office uses.</p> <p><b>2011/4947/P</b> Use of the buildings as offices (Class B1) – Certificate of lawfulness applications granted on 30/11/2011.</p> <p><u>38 Russell Square</u> <b>2010/4965/P</b> Use of the premises for B1 (office) purposes – Withdrawn 23/11/2010 as it was considered that there was insufficient evidence to demonstrate that the legal use of the properties were ancillary to the British Museum as opposed to independent office uses.</p>			

**2011/2677/P**

Use of the buildings as offices (Class B1) - Certificate of lawfulness applications granted on 19/07/2011.

39 and 40 Russell Square**2010/4964/P**

Use of the premises for B1 (office) purposes – Withdrawn 23/11/2010 as it was considered that there was insufficient evidence to demonstrate that the legal use of the properties were ancillary to the British Museum as opposed to independent office uses.

**2012/1586/P**

Use of the buildings as offices (Class B1) - Certificate of lawfulness applications granted on 03/05/2012.

41 -43 Russell Square**2010/4968/P and 2010/4971/P**

Certificate of lawfulness (existing) were submitted for 42 and 43 (one application) and 41 Russell Square respectively for use of the premises for B1 (office) purposes. The applications were withdrawn by the applicant on 23/11/2010 as it was considered that there was insufficient evidence to demonstrate that the legal use of the properties were ancillary to the British Museum as opposed to independent office uses.

**2011/2151/P and 2011/2149/P**

Certificate of lawfulness (existing) were granted on 08/07/2011 for 42 and 43 Russell Square (respectively) for use of the premises for B1 (office) purposes.

**2011/2675/P**

Certificate of lawfulness (existing) has been submitted for 41 Russell Square (respectively) for use of the premises for B1 (office) purposes. It is pending consideration and would be determined on or before 19/07/2011.

**Site and surroundings**

The application properties are located on the western side of Montague Street within a terrace that extends from the corner of Russell Square and Montague Place to No. 1 Montague Street. The terrace includes other properties used by the British Museum as well as the Grange White Hall Hotel. The terrace is four storeys in height with basement accommodation. The properties date from circa 1800 and the terrace (Nos. 1 – 11 Montague Street and 38 – 43 Russell Square) is Grade II listed buildings. The buildings are within the Bloomsbury Conservation Area.

**The application**

An application has been submitted for a certificate of lawfulness of existing use or development for 1 and 1a Montague Street to establish the lawful use of the properties as Class B1 (offices).

The applicant states that the individual properties, and not the wider British Museum estate, form the planning unit and that the properties have been operating continuously as offices for over 10 years and is therefore lawful.

In terms of the assessment the onus of proof in a lawful development certificate application lies with the applicant. The relevant test of evidence on such matters is 'the balance of probability', the applicant is not required to discharge the stricter, criminal burden of proof, namely 'beyond all reasonable doubt'. The local planning authority are advised that if they have no evidence of their own, 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. 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 applicant's evidence**

The applicant has submitted the following documentation as part of their application in order to overcome the concerns of the Council:

- Report by Montague Evans dated May 2011 providing the following contents

- (i) description of the certificate of lawfulness
- (ii) definition of building and planning unit – this includes relevant case law that supports the view that where an individual unit forms part of a wider landholding it is the individual property and not the wider estate that forms the planning unit.
- (iii) planning history – lists of planning and listed building consents granted in 1986 for works to the offices to form a lift.
- (iv) identification of case law – two notable cases have been identified to consider whether the use of a building can be determined to be ancillary to another use (Broadway Meadow Cottage and Land at Rosier Gate). The cases identified the matters that would be taken into account when determining whether a use is ancillary to another including whether the use is dependent on the other for utilities, separate postal addressed and severability from the main use
- (v) other documentation – sworn affidavits from Mr Guy Parks (Head of the Capital Projects and Estates Team) and Mr Martyn Tiller (Estates Manager of the Capital Projects and estates Department) who have worked for the Museum since 1995 and 1973 respectively
- (vi) Assessment – this includes reasons to conclude that the office use has been operating continuously for over 10 years and that the offices are separate planning units to the Museum.
- (vii) Summary

The report also includes 10 appendices including:

- (i) site location plan
- (ii) drawings/floor plans – illustrating the layout of the floors of the building (basement, ground, first, second and third floors) and the uses of the rooms as offices, stores, meeting rooms, kitchens and toilets
- (iii) photographs – and associated basement (level 1), ground (level 2), first (level 3), second (level 4) and third floor (level 5) plans showing office and storage layouts and equipment associated with this use
- (iv) detailed planning history showing other relevant decisions made on other British Museum owned properties made recently in the local area.
- (v) list description
- (vi) signed affidavit of Mr Guy Parks dated 19/09/2010, the Head of the Capital Projects and Estates department of the British Museum since 2008 and architect and project manager for the Museum since 1995. He states that the buildings are used and occupied by the Museum's staff as separate offices for general office activities since at least 1993 and have been in continuous use as offices for more than 10 years.
- (vii) signed affidavit of Mr Martyn Tillier dated 19/09/2010, the Estate Manager of the Capital Projects and Estates Department of the British Museum since 1973 stating that the buildings are used and occupied by the Museum's staff as separate offices for general office activities since at least 1993 and have been in continuous use as offices for more than 10 years.
- (viii) Copies of gas, water and electricity bills dated September 2011 for the specific site
- (ix) opinion of Mr Thomas Hill QC dated 18/03/2011 relating to 42 and 43 Russell Square, advising the Trustees of the British Museum, stating that by applying the legal principles governing the identification of a planning unit the properties should be treated as separate

planning units as (i) the properties may be occupied by the Museum at present however this has not been the case for the vast majority of their lives as buildings. They have always been physically separate from the Museum where the only physical links between the two properties is via a locked door between the Museum complex at basement level and a gate in the rear garden at ground floor level (ii) the properties function separately from the Museum and the buildings have never had the benefit of planning permission for D1 use. They function at present as a separate office and storage outpost of the Museum and the functions could be performed elsewhere.

The main issues to consider are:

- Continuous use of the properties as offices for more than 10 years
- Properties are separate planning units to main Museum

### **Continuous use**

The applicants have submitted a review of the planning history relating to the property. The dates of planning and listed building consents include 1985, 1986, 2008 / 2009 (both withdrawn) and 2010 and indicate that the building has been occupied as offices since 1985. It is considered that the information from the planning history records together with the submission of separate utilities bills do not in themselves demonstrate that the building has been operating as offices for a continuous period of 10 years. However, sworn affidavits have been submitted from two employees of the museum that confirm that the property has been operating as office use continuously since 1990. It is therefore considered that this would provide sufficient evidence to meet the required balance of probabilities test.

### **Separate planning units**

In deciding whether a site is a separate planning unit, and so able to be granted a certificate for B1 use, it would be necessary to consider:

If the B1 use is incidental/ancillary to the main D1 use, then 1 and 1a should be treated as a part of the main Museum property planning unit with a D1 use. In deciding whether a use is ancillary Thomas Hill QC suggests from an analysis of the case law that it would be necessary to consider whether the site has separate utilities or is dependent on another property/building, whether the site has a separate postal address and whether the site is severable from the main property/building and is able to be used independently.

1 and 1a Montague Street has separate utility meters, individual postal address and is able to be used as an independent site (and have been used as such previously). The garden gate can be locked or removed and door access in the basement area to No.'s 1 and 1a Montague Street into the Museum could be filled in and would sever any physical attachment to the Museum complex. It is entirely possible for the property to operate as an office use without any connection to the Museum.

However, the fundamental test is whether the office use is ordinarily ancillary or incidental to the primary use (i.e. museum) or whether it is a separate use in its own right. 1 and 1a are part of the block of land including the Museum and bordered by roads. However, 1 and 1a are a separate physical area, and benefits from a different address from the main Museum building and is only linked by a door through to the basement of 1 and 1a. The B1 use is in a different physical area to the D1 use. Consistently, there are other properties also surrounding the Museum that are independent and separate from the Museum. No. 1 and 1a has historically not always been linked to the Museum use. It is considered that there are two separate uses within different physical areas (functional and physical separation) between no. 1 and 1a and the main Museum site and therefore these can be considered as two separate planning units with different uses.

It would be reasonable to conclude that no's. 1 and 1a and the main Museum site are two separate planning units with different uses. Although the planning history does not demonstrate that the properties have been in office use continuously for over 10 years, sworn affidavits have been submitted by two employees of the Museum who confirm that this has been the case.

It is considered that on the balance of probability conclusive evidence has been submitted to support the

assertion that the application sites have been used as offices for a continuous period of over 10 years and would be considered as separate planning units from the British Museum.

**Recommendation**

Grant certificate of lawfulness for an existing use.

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