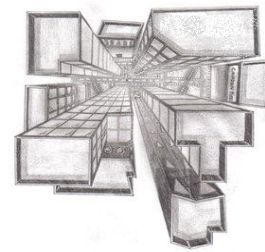


# KR PLANNING

## CHARTERED TOWN PLANNER

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Our Ref: MISC/AM

9 December 2015

Jonathan McClue  
LB of Camden  
5 Pancras Square  
LONDON  
N1C 4AG

Dear Sir

**TOWN & COUNTRY PLANNING ACT 1990**  
**APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR USE OF A BUILDING AS C3**  
**DWELLINGHOUSE FOR LAND AT 9A HARGRAVE PLACE, LONDON, N7 0BP**

Please find enclosed an application for a Certificate of Lawfulness of existing use under Section 191 (1) (A) of the Town & Country Planning Act 1990 (as amended) in respect of the use of the existing building at the above location as a self contained flat. The Applicant is the freehold owner of the site. The application includes the following :

1. The requisite application form
2. The requisite site location plan
3. A copy of a Statutory Declaration by the owner of the site
4. A copy of the documentary evidence listed below
5. Floor plan of the unit
6. The relevant fee

### Background

An application has been made for residential conversion of the upper floors of the public house. Queries have been raised by Officers as to the lawful use of the existing unit so this application is made to settle the issue.

### The Statutory Framework

Section 171A(1) of the 1990 Act, under the side heading 'Expressions used in connection with enforcement', identifies two categories of breach of 'planning control', the first of which, development without required permission, embraces both forms of controllable development identified in section 55(1), and the second of which may or may not result in such development, failure to comply with a condition to or limitation on permitted development:

*'For the purposes of this Act -*

*(a) carrying out development without the required planning permission; or*

*(b) failing to comply with a condition or limitation subject to which planning permission has been granted; constitutes a breach of planning control'*

Section 171B provides two different time-bars for enforcement action for 'breach of planning control' according to different forms of breach whether in the form of impermissible development or for failure to comply with a condition to or limitation on permitted development. In summary, it provides: a time-bar of four years from substantial completion of works for breach by way of operational development; four years from breach for one particular category only of change of use, namely 'of any building to use as a single dwelling house'; and ten years from breach for 'any other breach of planning control'. The section reads as follows:

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.*
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of four years beginning with the date of the breach.*

When an application for a CLEUD is made, the Council is required under S191(4) of the 1990 Act to consider the lawfulness of the use at the time of the application and to issue a certificate if it is satisfied that it should do so. Lawfulness is defined by S191(2) of the Act as follows:

*'uses (and operations) are lawful at any time if:*

- a) No enforcement action may then be taken in respect of them because the time for enforcement action has then expired*
- b) They do constitute a contravention of the requirements of any enforcement notice then in force'*

## The Site

The site is located on a short cul-de-sac off Brecknock Road (A5200) in west Kentish Town. It is approximately 0.02ha in area and contains a Public House with associated residential accommodation. The building covers a total of 190 sq.m (GEA).

The Admiral Mann PH has been registered as an asset of community value but it is not located within a Conservation Area. The public house is linked to a property to the rear of the site containing additional public house storage accommodation at ground floor level with a self-contained one bedroom flat above at first floor level and it is this unit for which the Certificate is sought.

## List of Documentary Evidence with relevant commentary

1. Copy of Lease Agreement for the years 2009, 2010 and 2014

The leasehold agreements are Assured Shorthold Tenancies, the agreements that regulate all lease arrangements for tenants. The agreements define the premises as a dwellinghouse.

These agreements show that the use of the premise as a dwellinghouse was in October 2009, or more than 4 years ago.

## 2. Tenancy Deposit Certificates

This statutory scheme requires that tenants deposit money is placed into a government backed scheme to protect tenants from unscrupulous landlords. This scheme is entirely separate from the applicant, but shows that moneys were deposited on behalf of tenants.

It will be noted that the TDC relate to the same names on the tenancy agreements, and that the deposits were taken in October 2009, or more than 4 years ago.

## 3. Gas Safety Records

Landlords are required to have gas appliances checked on an annual basis. These certificates date back to March 2003, or more than 4 years ago.

## 4. Directgov Council tax record

This Government website records that occupants of the property has been paying Council Tax since at least 17/12/2006, or more than 4 years ago.

**9A, HARGRAVE PLACE, LONDON, N7 0BP** Last update on 07/12/2015

Local authority reference number	Council Tax band	Improvement indicator	With effect from	Mixed use property	Court code
5131031	B		17/12/2006	No	

<http://cti.voa.gov.uk/cti/BandDetail.asp?lcn=0>

## The Case to be Made

It is appreciated that the onus of proof lies with the applicant to prove the contention that the unit has been in continuous use a self contained dwellings for a period exceeding 4 years. The relevant test of the 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.

It is considered the evidence provided above clearly proves the case that the premises has been occupied as an residential dwellinghouse. The premise remains occupied by a domestic household, this use commenced more than four years ago and will continue to be so in the future.

### Summary of Lawfulness

In this case we can demonstrate the following:

- i. That the existing unit has been used as a self contained dwelling;
- ii. That the initial breach occurred more than 4 years ago;
- iii. That each dwelling unit was used continuously for more than 4 years with no intervening use that would have brought the unauthorised use to an end;
- iv. That a period of over 4 years has since expired since the breach began; and
- v. The LPA has never issued an enforcement notice in this respect.

By virtue of s. 55(3)(a) of the 1990 Act that change constituted a material change of use, and was therefore development without planning permission within the meaning of s.171A(1)(a)

### Conclusion

We believe that the evidence we have produced has discharged the onus on the applicant to prove, on the balance of probabilities, that this claim for the Certificate is correct. The evidence is both clear and unambiguous, and trust that a favourable decision can be issued.

Should you have any queries relating to this matter, please do not hesitate to contact me on 07545 264 252

Yours Sincerely

Kieran Rafferty  
**BA(URP) MPIA MRTPI**

Encl:

Copy to: J.Moore