



**Application for a Certificate of Lawfulness for a Proposed Use or Development**  
**Greater London House, Hampstead Road, London, NW1 7QX**

**1. Introduction**

- 1.1 We submit this note on behalf of our client Lazari Investments Limited in support of their application for a Certificate of Lawfulness for a Proposed Use or Development under Section 192 of the Town and Country Planning Act 1990 (the **1990 Act**) (the **Application**).
- 1.2 The Application seeks to confirm that the proposed partial infill of the open air atrium/light well within the existing building to create Use Class B1 office accommodation (the **Infill Works**) at Greater London House, London (the **Site**) is lawful and does not require planning permission.

**2. "Development" within the 1990 Act**

- 2.1 Section 55(1) of the 1990 Act states the meaning of "development" and "new development" is:

*Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*

- 2.2 Section 55(2) of the 1990 Act states that the following operations or uses of land shall not constitute development:

- (a) *the carrying out for the maintenance, improvement or other alteration of any building of works which—*
- (i) *affect only the interior of the building, or*
  - (ii) *do not materially affect the external appearance of the building.*

- 2.3 The Infill Works are works for the improvement or other alteration of the building on the Site. The Infill Works being within an open air atrium/lightwell will be exterior works. As the infill Works will not be visible above the roof line of the existing building they will not materially affect the external appearance of the building.

- 2.4 The above stated position is supported by the case of *Burroughs Day v Bristol City Council* [1996] 1 PLR 78. That case considered whether works undertaken to a building materially affected the external appearance of that building by reference to whether the changes were visible from a number of normal vantage points, with visibility from the air or a single vantage point not being sufficient.

- 2.5 The judge held that when assessing the impact of external works, it is necessary to consider the materiality of those works upon the external appearance of the building. In this regard he stated that:

*whether the effect of an alteration is "material" or not must ... depend in part on the degree of visibility. A change to the front wall of a building or the front of the roof which is visible from the street is much more likely to be "material" than a similar change which can be seen only from the top of much taller buildings.*

- 2.6 The change to the external appearance of the building by the Infill Works will be seen only from a very limited number of enclosed vantage points within the atrium/light well



itself. There are no other vantage points surrounding the site from which the change will be visible.

- 2.7 The open air atrium/light well is currently used for parking vehicles and for the delivery and servicing of the building; this use is ancillary to the office use (Use Class B1) of the existing building. Accordingly the Infill Works will not constitute a material change of use.

**3. Conclusion**

- 3.1 For the reasons set out above the Infill Works do not constitute "development" for the purpose of the 1990 Act and do not require planning permission.
- 3.2 On that basis a Certificate of Lawfulness for a Proposed Use or Development should be granted.
- 3.3 Please contact Matthew White on 020 7466 2461 or [matthew.white@hsf.com](mailto:matthew.white@hsf.com) should you wish to discuss this note further.

**Herbert Smith Freehills LLP**

16 February 2016

Ref: 2461/18857