

# THE JTS PARTNERSHIP

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Our Ref: ND/mac/8486

03 August 2016

The Planning Department  
London Borough of Camden  
Second Floor  
5 Pancras Square  
c/o Town Hall  
Judd Street  
London. WC18 9JA

Dear Sirs

**Planning Portal Ref: PP-05373905**  
**Application for a Certificate of Lawful Use or Development**  
**Edinboro Castle, 57 Mornington Terrace, London, NW1 7RU**

We enclose an application for a Certificate of Lawfulness in respect of two, free-standing, 'market stalls', which have been erected in the rear customer garden of the Edinboro Castle public house. The application comprises the following documents:-

- This covering letter dated 1st August 2016.
- Completed Application Forms and Certificates.
- Red Line Plan JTS/8486/100/0.
- Evidence of Lawful Use
  - Doc 1: Drawing No. ECG01 dated 29.10.05.
  - Doc 2: Drawing No. ECG02 dated 29.10.05.
  - Doc 3: Drawing No. ECG02/02 dated 16.02.06.
  - Doc 4: Drawing No. ECG02/03 dated 17.03.06
  - Doc 5: Photograph of 'market stalls' as erected.
  - Doc 6: Briefing Note Meeting dated 01.11.06.
  - Doc 7: Invoice to re-skim 'market stalls' dated 29.07.09.
  - Doc 8: Photograph of 'market stalls' as re-skimmed.
  - Doc 9: Current photograph of Edinboro Castle.
  - Doc 10: Current photograph of rear customer garden.

Regulated by RICS  
Trading as a Limited Liability Partnership. Registered Office: Number One, The Drive, Great Warley, Brentwood, Essex CM13 3DJ  
Registered in England & Wales. Registration No. OC307263

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The Edinboro Castle is a listed building but, and as the 'market stalls' are free-standing structures, they only require planning permission (they do not require listed building consent). Planning permission was, however, never obtained, but the 'market stalls' are now lawful as they have been on site for well in excess of four years.

The Planning & Compensation Act 1991 introduced rolling time limits, within which local planning authorities can take enforcement action against breaches of planning control.

Action can now only be taken against operational development (not involving a change of use) within the first four years. If operational development becomes immune from enforcement action, through the expiry of time (i.e. four years), then it becomes lawful and an application for a Certificate of Lawfulness of Existing Use or Development may be made to regularise the situation.

When an application for a Certificate of Lawfulness is made, the onus is on the applicant to provide sufficient evidence to demonstrate, to the satisfaction of the local planning authority that, on the balance of probabilities, the development / use is immune from enforcement action and is thus lawful.

Paragraph 17c-006 of the National Planning Practice Guidance provides that, **"the local planning authority is entitled to canvas evidence if it so wishes before determining an application. If the local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter evidence"**.

Paragraph 17c-006 goes on to state that, **"in the case of applications for existing use, if a local planning authority has no evidence, nor any 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, providing the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability"**.

When determining an application for a Certificate of Lawful Use or Development, **"a local planning authority needs to consider whether, on the facts and under planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process"** (Paragraph 17c-009 of the NPPG).

The question for the Council, in determining these applications, is, therefore, whether the 'market stalls' have been on site for more than four years. If they have, and regardless of their compliance with policy, or their impact upon the setting of the listed building, they are lawful and a Certificate should be granted.

#### **The Evidence**

The 'market stalls' were erected in the rear customer garden of the Edinboro Castle as part of a garden refurbishment scheme undertaken in early Spring 2006. Reference is made, in this respect, to drawings ECG01, ECG02, ECG02/2 and ECG02/3.

Drawing ECG01 (dated 29<sup>th</sup> October 2005) shows the rear garden area as it existed at the time (without 'market stalls'). Drawings ECG02, ECG02/2 and ECG02/3 show the evolving garden scheme. They are dated 29<sup>th</sup> October 2005, 16<sup>th</sup> January 2006 and 17<sup>th</sup> March 2006, respectively, and all show two 'market stalls' in the positions where they currently are on site.

The garden refurbishment scheme was carried out in the Spring of 2006, which is when the 'market stalls' were installed (see Doc 5).

The Company undertook a further refurbishment, this time of the interior of the premises, in early 2007. The minutes of the original briefing meeting for that project is reproduced as Doc 6. It is dated 1<sup>st</sup> November 2006 and refers (at Item 7.5), to a request to investigate the provision of, **"a covered link installed to the 2 no existing market stools adjacent through front bar"** (it is noted that 'market stools' is incorrectly spelt).

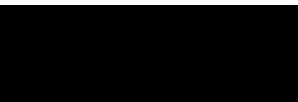
In 2009, the Company decided to re-skin the 'market stalls'. This work was undertaken by Deans Blinds and their invoice, dated 29<sup>th</sup> July 2009, is provided as Doc 7. Doc 8 shows the 'market stalls' as re-skinned.

Finally, Docs 9 and 10 shows the 'market stalls' as they exist today.

The above evidence conclusively demonstrates that the 'market stalls' have been permanently on site since the early part of 2006 (i.e. for over a decade). Accordingly, the four year test is passed and the evidence demonstrates that, on the balance of probabilities, the 'market stalls' are lawful and that a Certificate should be issued.

If the Council requires any further information relating to the application, then please contact either Mr N Davey or Mr John O'Brien of this office.

Yours faithfully



**John O'Brien**  
**For THE JTS PARTNERSHIP LLP**

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