

For and on behalf of
Mr Nicholas Rae

TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

SUPPORTING STATEMENT

**Certificate of Lawfulness for an Existing Use at
29-30 King's Mews, London, WC1N 2JB**

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1.0 INTRODUCTION

1.1 This document has been prepared by DLP Planning Ltd on behalf of Mr Nicholas Rae (*the applicant*) and comprises a Supporting Statement in relation to an application for a Lawful Development Certificate for an Existing Use at 29-30 King's Mews, London, WC1N 2JB (*the site*) which is located within the local authority area of the London Borough of Camden (*the Council*).

1.2 The application is made under Section 191 of the Town and Country Planning Act 1990 (as amended) for a Lawful Development Certificate to establish that the use of the whole of the subject building as one self-contained dwelling is lawful by virtue of Section 171B(2) of the Town and Country Planning Act 1990 (as amended). This sets out that:

“Where there has been any breach of planning control consisting in the change of any building to use as a single dwellinghouse 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.”

1.3 The effect of Section 171B(2) is that the residential occupation of the premises for a period of four or more results in the use becoming lawful. That is the case with respect to the subject site. It is the applicant's view that the use of the property as one self-contained dwelling commenced in June 2012, thereby exceeding the four year period set out in the legislation. This is principally demonstrated in the Council Tax and Business Rate records for the property, along with some other evidence including the applicant's Statutory Declaration.

2.0 SITE CONTEXT

- 2.1 The site is a three storey building located on the east of King's Mews in the London Borough of Camden. The site is located within the Bloomsbury Conservation Area.
- 2.2 As this Statement will set out clearly, the use of the property as one self-contained dwelling commenced in June 2012 and so since this time its lawful use in planning terms is solely Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 2.3 The applicant purchased the property in November 2011 and initially moved to reside on the second floor which was an established flat. The second floor at that time consisted of 2 bedrooms, a living room, kitchen and bathroom. The lawful use of the ground and first floor was a Class B1/B8, and the applicant initially used the building as such. This consisted of the location of the applicant's company (Nicholas Rae & Associates Ltd, a mixed interior design consulting/furnishing/contracting business which fluctuated between having 3-4 staff and in some periods with no permanent staff other than himself) and the company's archive records, spare office furniture, stock of tools, spare materials and upholstery project furniture were located within the commercial floorspace.
- 2.4 As the Council will be aware, a planning application (ref. 2012/3877/P) for the "*Erection of new façade and second and third storeys following partial demolition of existing building in association with the change of use from warehouse/office at ground and first floors (Class B1/B8) and flat on second floor (Class C3) to 2 x studio flats at ground floor and 1 x 3 bedroom maisonette at 1st, 2nd & 3rd floors (Class C3)*" was submitted and approved by the Council on the 18th July 2013.
- 2.5 It is worth noting that the relevant planning conditions imposed on this permission (which was subject to a Minor Material Amendment in 2016) have been approved, the required Community Infrastructure Levy (CIL) paid and the planning permission implemented by way of material operation (as set out in Section 56 of the Town and Country Planning Act 1990 (as amended)) being undertaken within the three year time

period. Following this initial material operation, the applicant has undertaken some further works to the property as part of the implementation of the planning permission. Further works are currently pending and so whilst this planning permission remains extant and the applicant intends to complete its implementation, at the time of the submission of this Lawful Development Certificate application, the property is still being used solely as a residential dwelling (and retains all of the facilities required for this, i.e. hot and cold water, full cooking facilities, bedrooms etc).

- 2.6 Initially the cessation of the commercial space and conversion to residential occupation was not intended to be permanent. However, in June 2012 the applicant did in fact cease the commercial use of the building and undertook internal works so that he could use all of it as a self-contained dwelling. This consisted of:

Ground floor – no physical changes but use for storage of domestic vehicles and room as home office;

First floor – removal of commercial fixtures and fittings and creation of an open plan living room/kitchen/dining room and a bathroom;

Second floor – removal of the cooking facilities and replaced kitchen on this floor with laundry room (as kitchen relocated to first floor).

- 2.7 The property is accessed from a single front entrance door on King's Mews, and the ground floor garage is accessed from a separate sliding door.

3.0 ASSESSMENT

3.1 This is an application under Section 191 of the Town and Country Planning Act (as amended) for a Certificate of Existing Lawful Use to seek confirmation of the lawfulness of the use of the whole of the subject building as one self-contained dwelling.

Whether the property is a Single Dwellinghouse

3.2 The building has the following facilities and amenities fundamental to occupation as a single dwellinghouse:

- Kitchen, fully equipped to enable the storage, preparation, cooking and serving of hot and cold foods;
- Bathrooms, including full washing and lavatorial facilities;
- Bedrooms;
- Rooms for living, entertaining and leisure pursuits.

3.3 The property is registered for its own Council Tax liability, and for all domestic utilities bills, including gas, electric and water. There is no doubt, therefore, that the property is a "single dwellinghouse" for the purposes of Section 171(B)2.

The evidence

3.4 The evidence submitted in support of the application consists of the following:

Statutory Declaration

3.5 The applicant has prepared and signed a Statutory Declaration that is submitted in support of the application. This confirms the following:

- The applicant acquired the building in 2011 and initially lived in just the second floor of the building, and ran his business from the rest of it from that time until June 2012.
- From June 2012, he commenced occupation of all of the building on a residential basis.

- The residential occupation of the all of the building has been continuous and remains so at the time of this Lawful Development Certificate application. The applicant pays Council Tax rates on all of the building, along with other bills relating to its domestic use.

Floor Plans

- 3.6 The submitted floor plans indicate the differences between the building from 2010, when the ground and first floor were in commercial use, and then in 2012 following its conversion. As can be seen from the plans, the domestic kitchen facilities and a bathroom had been added to the first floor of the building, whilst the ground floor was used for storage of private vehicles with a separate room for a home office.

Council Tax

- 3.7 Council Tax records for the property that indicate it has been liable for and paying domestic rates from the year 2011/12 are provided. As per the analysis below, the records must be distinguished between those that applied to just the second floor of the property and those that applied to whole of the property following the applicant's occupation of all of it on a residential basis. This matter is set out in further detail below.

Business Rates

- 3.8 Initially, the applicant paid commercial rates on all of the ground floor and first floor based on its total rateable value of £12,500 in connection with its lawful Class B1/B8 use. This rateable value was incorrect, however, because the ground floor of the building was vacant and not being actively used for commercial purposes (but its planning use remained as commercial). Accordingly, in correspondence with the Valuation Office Agency (VOA) and the Council, the rateable value was reduced to £5,000 to reflect that the liable floorspace related to the first floor only (of 107 sqm). The applicant then ended paying commercial rates on the first floor of the property when he commenced residential occupation of all of it (residing on all three floors, having originally just occupied the second floor). Accordingly, the records we provide

with this application indicate that non-domestic rates ceased to be paid with effect from the 1st June 2012.

Utilities documents

- 3.9 The applicant has paid for gas, electricity, water and broadband/telephone consistent with the whole property's use as a single dwelling during the four year period.

Gas – from July 2012 to May 2014 the applicant was registered with Scottish Power for the provision of gas to the property. We submit invoices issued by Scottish Power in relation to the property between these dates, with the last invoice being dated June 2012 and specifying that this was the 'final' statement. From May 2014 to the current time the applicant has had a dual-fuel account with the Co-Op and so this provider supplied the property's gas. Accordingly, invoices for this period are provided which indicate this, with the most recent statement being dated May 2017 and so being as current as possible.

Electricity – as noted above, from May 2014 to the current period the applicant has had a dual-fuel account with the Co-Op and so this provider supplied the property's electricity. Accordingly, invoices for this period are provided which indicate this, with the most recent statement being dated May 2017 and so being as current as possible. Prior to May 2014 the applicant's property was provided with electricity from a different supplier, the records of which have unfortunately been mislaid.

Water – The applicant started a new payment plan with Thames Water in April 2012 and this has continued on a yearly basis since that date. Accordingly, invoices for this period are provided which indicate this, with the most recent statement being dated to cover the period from April 2017 to March 2018.

Telephone / Broadband – Since September 2013 the applicant has had a joint Broadband and Telephone supplier in the form of Plusnet. Accordingly, invoices for this period are provided which indicate this, with the most recent statement being dated July 2017. Prior to September 2013 the applicant's property was provided with Telephone / Broadband from BT, the records of which have unfortunately been mislaid.

Analysis of Evidence

- 3.10 Within the constraints as outlined above, the evidence that the applicant has been able to assemble clearly demonstrates that, on the balance of probabilities, that the whole of the subject building as one self-contained dwelling has been in continuous use for a period of more than four years before the date of this application.
- 3.11 As set out above, the lawful use of the building when the applicant acquired it in 2011 was Use Class B1/B8 on the ground and first floor and residential on the second floor. The applicant initially lived in just the second floor of the building, and ran his business from the rest of it until June 2012. At this time, the applicant commenced occupation of all of the building on a residential basis.
- 3.12 The Statutory Declaration submitted is a formal statement made in the prescribed way affirming that all three floors of the building has been lived in and used on a domestic basis since June 2012. The Statutory Declaration describes the chronology of how the property has been used with respect to its commercial and then residential use (in terms of the ground and first floor). The Statutory Declaration has been signed in the presence of a solicitor with reference to the Statutory Declarations Act 1835 and as such carries significant weight in the consideration of granting the Lawful Development Certificate.
- 3.13 In terms of the Council Tax records, as the second floor of the property has always been in residential use, originally the applicant was only paying domestic Council Tax rates on this part of the building (with the ground and first floor liable for business rates as set out below). However, following the applicant's occupation of all of the building, this changed the property from a Band E to Band H, reflecting the increase in floorspace liable and so increase in its value. This was changed retrospectively to include all of the property from the 1st June 2011 – hence the applicant was liable to back pay the domestic rates on the property from this date, which he of course did so.
- 3.14 The Council Tax record for 2011/12 describe the property as being '30A King's Mews'. However, following its re-banding, the description used by the Council changed to '29-30 King's Mews' with effect from the annual statement for 2012/13 onwards. This is

clear that the Council considered the domestic rates to be liable for the whole building, confirming that its use was domestic only and not commercial. Accordingly, this evidence is considered to weigh strongly in favour of granting the Lawful Development Certificate.

- 3.15 As noted above, the applicant originally used the commercial floorspace of the building for the purposes of running his business, in accordance with its lawful use in planning terms. As such, it was liable for and paid business rates on this floorspace (and this was reduced retrospectively due to the change in the rateable value of the premises). From June 2012, however, the applicant ceased paying business rates on the property as this use had ended and been superseded by the commencement of the residential use of the whole building. The records provided by the VOA are clear that for the financial year April 2012 to March 2013, the property was only liable for business rates up to the end of May 2012 (i.e. the first two months of the financial year), and that from the 1st June 2012 the record for this property had been deleted. Accordingly, this evidence is considered to weigh strongly in favour of showing that the commercial use of the ground and first floor ceased in May 2012 and so from June 2012 its use was not commercial, and so granting the Lawful Development Certificate.
- 3.16 In addition to the Statutory Declaration, Council Tax bills and business rate records, the applicant is able to provide a wealth of utilities bills that indicate the use of the property for residential purposes. The water utilities bills provided date from April 2012 and so cover all of the period in question (i.e. June 2012 onwards), including of course the four year period from July 2013 that is most relevant to the granting of the Lawful Development Certificate. Gas, telephone / broadband and electricity bills are provided from July 2012, September 2013 and May 2014 respectively. The former also covers the four year period in question, whilst because of some issues with record keeping (which are clearly not uncommon or unusual) the latter two do not cover the full four year period. Nonetheless, when considered both individually and collectively, the evidence provided is considered to weigh strongly in favour of granting the Lawful Development Certificate.
- 3.17 It is of note that some of the utilities bills refer to the property by different names, for example, '30 Kings Mews' or '30A King's Mews.' It is the case that the various utilities

companies have used different names for the property, whilst the Council have referred to it, correctly, as 29-30 King's Mews following its re-banding for Council Tax purposes. Thames Water originally referred to the property as 'Flat 2, 30A King's Mews' but updated their records and now correctly refer to the property as '29-30 King's Mews.' That some of the utilities companies erroneously refer to the property by a slightly different address does not detract from the contention that it is in residential use and so should not be given any weight in the determination of the Lawful Development Certificate application. It is clear that all of the utilities referred to are for a domestic, not commercial, property, and so this should be given significant weight.

Absence of deliberate concealment

- 3.18 Section 124(1) of the Localism Act 2011 inserted new sections 171BA, 171BB and 171BC into the Town and Country Planning Act 1990 to allow enforcement action, in England, to be taken against a breach of planning control when the time limits for taking action have expired and the breach has been concealed.
- 3.19 In order to use these powers, the Local Planning Authority must apply to the Magistrates Court for a *Planning Enforcement Order* within 6 months of the day on which the apparent breach came to the authority's knowledge. If an order is granted, the authority has one year to take enforcement action. The authority can also apply for a planning enforcement order before the time limits for taking action have expired, as the expiry date may be in dispute. The Magistrates Court may make the order only if satisfied, on the balance of probabilities, that a person or persons have deliberately concealed the apparent breach.
- 3.20 In this instance there has patently been no concealment of the occupation of the whole of the building as a single dwelling. The Council Tax records demonstrate clearly that the Council was made aware of the whole building's occupation as a single dwelling from 2012 and that it has been aware of this ever since. Indeed, in making the Council aware of this the applicant was liable to both pay a higher rate of Council Tax and back pay the difference for the years when a lower amount had been paid and so in way benefited financially from making the Council aware.



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3.21 There has patently been no deliberate concealment and accordingly, the provisions inserted by Section 124(1) of the Localism Act 2011 do not apply to this case.

4.0 CONCLUSION

- 4.1 The evidence submitted in support of the applicant's claim that the use of the whole of the building as a single residential dwellinghouse commenced more than four years ago and have been in continuous use since is sufficient to grant the Lawful Development Certificate. The evidence is sufficiently precise and unambiguous to support the claim and there is no contradictory evidence to suggest otherwise.

- 4.2 The evidence submitted is comprehensive and includes a Statutory Declarations, Council Tax annual statements, Business Rate records and various domestic utilities bills.

- 4.3 Consequently, having reviewed and considered the submitted documentary evidence, the only reasonable conclusion which can be drawn is that, having applied the *balance of probability* test, the provisions of Section 171(B)2 are fully engaged and no enforcement action may be taken. A Lawful Development Certificate must be issued accordingly.

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