

Certificate of Lawfulness- Studios 1-4, 2 Downshire Hill, London, NW3 1NR

Planning Statement

Firstplan Ref: 17327/SH/ta

Date: December 2017

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Section 1: Introduction

- 1.1 This Planning Statement has been prepared by Firstplan, on behalf of Proper Proper T Limited, to confirm that Studios 1, 2, 3 and 4, 2 Downshire Hill are within Class B1 office use.
- 1.2 The application is submitted pursuant to Section 191 of the Town and Country Planning Act 1990 to seek a Certificate of Lawful Existing Use or Development (CLEUD) by submission of evidence relevant to the case, to request confirmation of the lawful use of the property in question. The evidence should establish both the factual position of the use of the property for a period of 10 years or more (in the case of non-residential uses) and prove the lawfulness in planning terms.
- 1.3 The onus of proof is held to be with the applicant in the submission of sufficient evidence. However, paragraph 6 of the NPPF Practice Guidance (2014) states:

“In the case of applications for existing use, if a local planning authority has no evidence itself, 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, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.”

- 1.4 This statement, and the supporting evidence enclosed, will demonstrate that on the balance of probability, the application site has been in use as offices in excess of 10 years.
- 1.5 This statement is structured as follows:
- **Section 2** describes the property and the current use on site;
 - **Section 3** assesses the lawfulness of the office use;
 - **Section 4** draws conclusions.

Section 2: Background Information

a) Site Description

- 2.1 The application site is a part 1/ 2 storey building to the rear of no. 1-4 Downshire Hill. Access to the site is from no. 2 Downshire Hill.
- 2.2 The surrounding area is predominately a mix of typical town centre uses and residential dwellings. The property is within Hampstead Heath Town Centre, and Town Centre Secondary Frontage. It is not located within a conservation area, nor is the building Listed or subject to an Article 4 Direction.
- 2.3 The premises have been in office use, in many different formats, since 1977, this is addressed in the Planning History Section below.

b) Planning History

- 2.4 The planning history available dates back to the 1970's. The documents available online outlines that the previous use of studios 1, 2, 3 and 4 is artists' studios or unrestricted office use.

Reference	Address	Description	Decision
2006/4254/INVALID	Studios 1 & 2 2 Downshire Hill London NW3 1NR	Change of use of first and second floor from artist's studio (Sui Generis) to office (B1).	Invalid application
2004/1979/P	Units 1-4 R/O 2 Downshire Hill London NW3 1NR	Change of use of the existing artist/architect studios on the first and second floors of the building to create 4 x self-contained residential maisonettes, each with an identified parking space in the communal garage on the ground floor.	Refused 25-08-2004
8601486	Studio 4 2 Downshire Hill NW3	Change of use from artist's studio to use as an architect's offices	Granted 20-11-1986
8601165	Studio 4 2 Downshire Hill NW3	Change of use from artist's studio to use as an architect's office.	Granted 16-07-1986

8500347	Studio 4 2 Downshire Hill NW3	Change of use from artist's studio to use as an architect's office	Granted 30-04-1985
8402140	Studios 1-4 2 Downshire Hill	Change of use of studios 1 - 4 to offices. <i>Appeal received against refusal of permission- appeal dismissed</i>	Refused 05-03-1985
25024	Studio 4, 2 Downshire Hill, NW3	Change of use from artist's studio to architects' studio and ancillary office	Granted 25-10-1977
9355	Studio 1, No. 2 Downshire Hill, N.W.3	Change of use of Studio 1, No. 2 Downshire Hill, N.W.3 to Architects use	Refused 27-08-1970
E7/17/A/9361	Studio 2, No. 2 Downshire Hill, N.W.3	Change of use of Studio 2, R/o. 2 Downshire Hill, N.W.3 to Architects' offices	Refused 27-08-1970

Section 3: Assessment of Lawfulness

- 3.1 Section 191 of the Town and Country Planning Act 1990 states that the minimum time required to have elapsed before a Certificate of Lawful Existing Use (CLEUD) can be applied for is a continuous period in excess of ten years. Therefore, the assessment of lawfulness will need to demonstrate that the site has been in use as offices for over ten years.
- 3.2 The submitted evidence is compelling and comprehensive.
- 3.3 Firstly, although not a change of use planning application, it is important to define an office use. The Town and Country Planning (Use Classes) Order 1987 (as amended) is the basis for the definition of B1a use classes, which is set out as follows:

“PART B

Class B1. Business

Use for all or any of the following purposes—

(a) as an office other than a use within class A2 (financial and professional services),

(b) for research and development of products or processes, or

(c) for any industrial process,

being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.”

- 3.4 With this in mind, it is clear that the historical uses of the site, as either an architect’s studio, architect’s offices and artist’s studio (see further explanation below) all fall within class B1 use.
- 3.5 Furthermore, it is evident from the planning history ascertained from Camden Council that the site has been in an office use (either as an artist’s studio, architect’s studio or architect’s office) for in excess of 10 years.
- 3.6 This is outlined below and attached as follows:

- Application ref: PL/8402140- Refusal of permission for change of use of studios 1-4 to offices at 2 Downshire Hill, dated 8 March 1985 (attached at **Appendix 1**)- *this shows pictures of the existing site and outlines that all four uses (architects, interior designer and fashion designer) were all typical office practices, consistent with B1(a) use class;*
- Application ref: PL/8500347- Grant of permission for change of use from artists' studio to use as an architects' office at Studio 4, 2 Downshire Hill, dated 07 May 1986 (attached at **Appendix 2**)- *this includes the application form and decision notice;*
- Application ref: 8601165- Grant of permission for change of use from artists' studio to use as an architects' office at Studio 4, 2 Downshire Hill, dated 22 July 1986 (attached at **Appendix 3**)- *this includes the application form and decision notice and confirms that the existing use was an office (studio), a B1(a) use class;*
- Appeal ref: T/APP/X55210/A/85/037200/P5 at studios 1-4 dated 06 May 1987 (Appeal to application ref: 8402140) (attached at **Appendix 4**)-*this is further discussed below;*
- Application ref: PL/9100586- Grant of planning permission for change of use from dentist studio to architects' office within Class B1 at studio 3, 2 Downshire Hill, dated 22 October 1991 (attached at **Appendix 5**)- *this includes the application form and decision notice, importantly the decision notice states the proposal as "change of use from dentist studio to architects' office within Class B1"; this sets out that the Council considered the proposed, indeed permitted, use to be within Use Class B1 (office);*
- Application ref: 2004/1979/P- Refusal of permission for the change of use of the existing artist/architect studios on the first and second floors of the building to create 4 x self-contained residential maisonettes, each with an identified parking space in the communal garage on the ground floor, dated 25 August 2004 (attached at **Appendix 6**)- *this includes the application form and decision notice. The sole reason for refusal relates to the loss of employment premises (policy EC3 of Camden Unitary Development Plan 2000) and employment accommodation suitable for small firms – i.e. B1(a) use class floor space (Policy EC5 of Camden Unitary Development Plan 2000); and*
- Application ref: 2006/4254- Change of use of first and second floor from artist's studio to office (B1) (attached at **Appendix 7**)- *this includes the application form and floor plans for the change of use application, it is understood that the change of use was not required and the application was ultimately withdrawn. It has been confirmed by the building manager that the tenants listed on the existing floor plans did indeed operate from the premises; none of these tenants operated as an artist but instead were all office based companies, thus B1(a) use class.*

- 3.6 Of particular relevance from the above is the Appeal decision (attached at Appendix 4), the Inspectors Report states (our underlining):

“In 1967, after negotiations about other possible uses (during which the council stated they would not favour an office use), permission was granted for the alteration and extension of the building as it now exists with a totally enclosed parking area on the ground floor and 4 artists’ studios above without any windows in the walls but with north facing roof-lights. This permission contained 2 conditions: the first prohibited the use of the ground floor in connection with its previous use, and the second limited the use of the artist’s studios to that use only and no other without prior consent of the council....”

....It is interesting to note that in 1971 the council proposed to take enforcement action against an architect who had established his office in Studio 1, and that led to the appeal I have mentioned above. The Secretary of State decided to allow the architects’ use of Studio 1 to continue, but the permission re-imposed the 2 conditions exactly as originally worded. The inspector actually recommended that permission be granted for either an artist studio or an architect’s office, and this seems quite straightforward. At the end of the inspector’s recommendation are the words “and for no other purpose including any other purpose in Class II of the schedule to the Town and Country Planning (Uses Classes) Order 1963. These words imply that he considered an architects’ office to be within Class II..”

- 3.7 It is clear from the above Appeal decision that the Inspector considered, at that time, that the use proposed (architect’s studio’s/ offices) did indeed fall within Class II of the Town and Country Planning (Uses Classes) Order 1963.

- 3.8 The Town and Country Planning England and Wales, The Town and Country Planning (Use Classes) Order 1963 states:

“Class II.- Use as an office for any purpose”

- 3.9 The use classes order has changed since this time, as set out above, The Town and Country Planning (Use Classes) Order 1987 (as amended) defines B1(a) use classes as *“an office other than a use within class A2 (financial and professional services)”*. For the avoidance of doubt, an A2 use is financial services,

professional services or any other services which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public.

- 3.10 It is clear, therefore, that an architect's studio indeed does lie within Class II of the Town and Country Planning (Uses Classes) Order 1963, and equally, within Class B1(a) of The Town and Country Planning (Use Classes) Order 1987.
- 3.11 Furthermore, there are recent examples within London Borough of Camden and other boroughs where Councils have established that artists' studios also fall within B1 use class. And this is clearly the accepted use of artist's studios set out within the Land Use Gazetteer (3rd Edition 2005).
- 3.12 Thus from the history available, the long term use of the property is, in accordance with the current use classes order - The Town and Country Planning (Use Classes) Order 1987 (as amended) – a Class B1(a) use.
- 3.13 Over and above the compelling information set out above, an online search of the Valuation Office's (VOA) records outlines that Studios 1, 2 and 3 and 4 Downshire Hill is an "office and premises", with records dating back to 2010. The VOA records for Studios 1, 2, 3 and 4 are attached at **Appendix 8**.

Appendix 8

- 3.13 Further contact has been made with the VOA to see whether their own records pre-date this. During a conversation on 15 December 2017, it was confirmed that their records pre-date the online information. Furthermore, the records document that all studios (1, 2, 3 and 4) were listed as "office and premises" since at least 2005, but notably before this, the VOA contact advised that in the case of Studios 3 and 4, the rateable value was based on a 'studio' use. This clearly ceased in 2005, providing yet more certainty regarding the established general B1(a) use class. This information has been requested from the VOA in writing and, once available, can be provided if required.
- 3.14 Additional evidence, confirming the continued use as office space for in excess of 10 years, has been submitted in support of the application as follows:
- Statutory Declaration signed by Mr Adam Kaye, part-owner of Proper Proper T Limited, the registered owner of the property;
 - Statutory Declaration signed by Mr Samuel Kaye, part-owner of Proper Proper T Limited, the registered owner of the property;

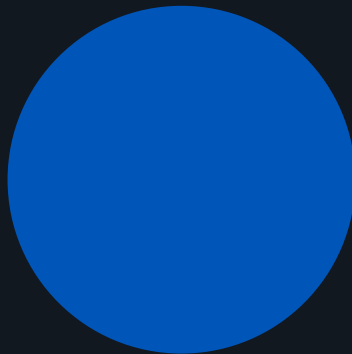
- Statutory Declaration signed by Ms Elaine Coles, Personal Assistant at Proper Proper T Limited, and manager of the property.

Appendix 9

- 3.15 On the basis of the above, it is clear that Studios 1, 2, 3 and 4 have been in Class B1(a) office use for in excess of ten years.
- 3.16 Furthermore, although this is not a planning application for change of use, it is useful to note that the existing B1(a) office use is in full compliance with Camden Local Plan (2017), Policy E2 Employment premises and sites.

Section 4: Conclusions

- 4.1 This Statement sets out the grounds for granting a Certificate of Lawfulness of Existing Use for Class B1(a) use at Studios 1-4, 2 Downshire Hill, London, NW3 1NR.
- 4.2 The evidence presented is overwhelmingly in favour of the Certificate being granted. The test in law is on the “balance of probability” and this is achieved easily with the evidence available. On the basis of the information provided in Section 3 and the attached appendices, it is clear that the existing use, as Class B1(a) offices, began more than ten years before the date of this application. Furthermore, the more historic use – as an artist/architect’s studio – also falls within Class B1(a), as set out within the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 4.3 It is therefore considered that the Certificate should be granted.
- 4.4 We trust these documents are sufficient for you to confirm your approval and we look forward to hearing from you in this regard.



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