

Deliveroo Editions, Unit to rear of 115-119 Finchley Road, Swiss Cottage

Statement in support of Application for a Certificate of Lawful Use

Firstplan Ref: 17232/MM/TH

Date: February 2018

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Section 1 Introduction

- 1.1 This Statement has been prepared by Firstplan on behalf of Roofoods Ltd (t/a Deliveroo Editions) in support of an application under Section 191 of the Town and Country Planning Act 1990 (as amended) (referred to as '**the Act**' here within) to seek a Certificate of Lawful Existing Use or Development (**CLEUD**) to confirm that the use of the Unit to the Rear of 115 Finchley Road (referred to as '**the Site**' here within) as a Class B1(c) 'Commercial Kitchen' by Deliveroo Editions is lawful.
- 1.2 The application is submitted in line with Section 191 of the Act. In summary, Section 191(2) of the Act defines lawful development against which no enforcement action may be taken and where no enforcement notice is in force, or for which planning permission is not required.
- 1.3 The National Planning Policy Guidance on Lawful Development Certificates (NPPG) confirms that the applicant is responsible for providing sufficient information to support an application for a CLEUD. Paragraph 006 states that "*...if a local planning authority has no evidence itself, not any from other, 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***" (our emphasis).
- 1.4 This Statement will demonstrate that the planning history confirms on the balance of probability that the Site is within Class B1c (light industrial use). Deliveroo Editions occupied and began operating from the Site in September 2017. The Site is in use as a commercial kitchen and this Statement will conclude that, on the balance of probability, the Deliveroo Editions use falls within Class B1(c) based on the following evidence:
- Legal opinion from Sasha White QC in relation to the Deliveroo Editions use (Appendix 5)
 - Operational Management Plan, prepared by Deliveroo (Appendix 4)
 - Noise Impact Assessments, prepared by Noise Solutions (Appendix 6)
 - Transport Statement, prepared by i-Transport (Appendix 7)
 - Kitchen Canopy Ventilation Details and Odour Maintenance Plan, prepared by Chapman Ventilation (Appendix 8)

1.5 Accordingly, this application seeks confirmation via a CLEUD that the Deliveroo Editions use is lawful in the context of the existing Class B1(c) permission attributable to the Site and, therefore, no material change of use has occurred.

1.6 This Statement adopts the following structure:-

- **Section 2** describes the Site and sets out the relevant planning history;
- **Section 3** provides the legislative background to the definition of a Class B1(c) use;
- **Section 4** describes the key characteristics of the Deliveroo Editions operation;
- **Section 5** assesses the lawfulness of the use;
- **Section 6** draws conclusions.

Section 2 Planning Background

a) Site location and description

- 2.1 The Site comprises the lower ground floor of 115-119 Finchley Road, Swiss Cottage. The total floorspace extends to 487 sq m (gross) and the Site is served by a dedicated servicing area and four off street car parking spaces. Access to the Site is from Finchley Road. Access is managed via an existing gate.
- 2.2 In terms of the immediate surrounding area, the upper ground floor of 115-119 Finchley Road is divided into a mix of retail and restaurant uses. Residential units are accommodated on the three upper floors. To the north east of the site is Cresta House, a nine-storey mixed use building with commercial uses accommodated on the ground floor and residential uses above. This building is served by the dedicated surface car park immediately to the north of the site. To the south and west of the site are residential properties fronting onto Dobson Close.
- 2.3 The Site and its immediate context is depicted in the aerial photograph at **Figure 1** below.

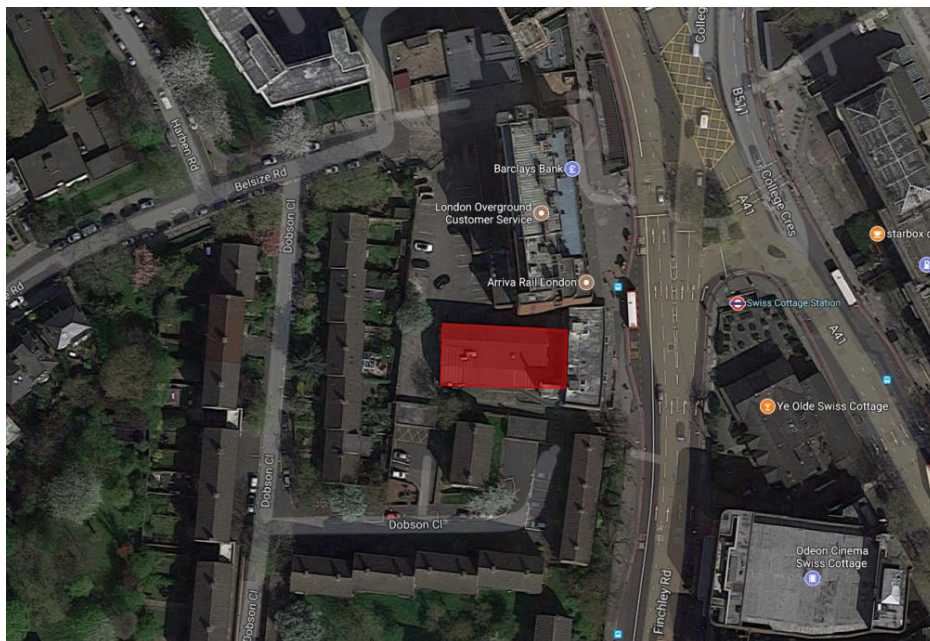


Figure 1. Aerial view of the Site and surrounding area.

- 2.3 The Site is located within the Swiss Cottage Town Centre. It is not situated within a Conservation Area or an area at risk of flooding.

b) Relevant planning history

2.4 A detailed planning history search of the Site was undertaken at the Council Offices. The planning permissions relating to this site are largely historic. Whilst we have been able to obtain copies of the decision notices, unfortunately the Council advised that copies of the supporting application documents have been destroyed. Notwithstanding this, it is considered that the following relevant planning permissions relate to the Site:-

- **TP.21868/NW** – The erection of a building, part two storeys and part five storeys, with commercial use on the lower floors and residential above (**granted 11 September 1959**).
- **PL/9200229** - Change of use of the ground floor from Class A1 to a mixed-use of A1 and B1 (**granted 8 May 1992**). There are no conditions attached to the decision which restrict the use of the Class B1 element to B1(a), B1(b) or B1(c).

2.5 Copies of the above planning permissions are attached at **Appendix 1**.

APPENDIX 1

2.6 For the reasons set out in paragraph 2.4 above, it has not been possible to obtain a copy of drawing no. 47902R, which is referred to in condition 1 of planning permission reference PL/9200229. However, on the balance of probabilities, it is considered that the Site comprises the B1 area referred to in the planning permission for the following reasons:-

- There are no further subsequent substantive planning permissions referring to a change of use;
- The Site has the characteristics of a Class B1 use in terms of its size, configuration and dedicated space for servicing and off street parking. The marketing brochure, prepared by Sint, in Spring 2017 before Deliveroo agreed terms for the Site described the Site as a “*large multi-use commercial unit with parking*.”. A copy of the marketing brochure is attached at **Appendix 2**.

APPENDIX 2

- The photos taken of the interior of the building prior to occupation by Deliveroo in June 2017 indicate a previous B1 use in that it would appear that part of the unit was divided into offices (the

location of a number of plug sockets indicate that the space was used for workstations) with a light industrial element (a conveyor belt and roller shutter was accommodated at the rear). The photos are attached at **Appendix 3**.

APPENDIX 3

- 2.7 On the basis of the above, it is considered that on the balance of probabilities, the Site is within Class B1 use.

Section 3 Legislative Background

3.1 The Use Classes Order (1987) (as amended) (UCO) puts uses of land and buildings into various categories known as ‘use classes’.

3.2 The UCO defines Class B1(c) as ***“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.”***

3.3 The first element of the definition of Class B1(c), is a use *“for any industrial process”*. The term *“industrial process”* is defined within the UCO, at Article 2, as:

“... a process for or incidental to any of the following purposes: —

a) the making of any article or part of any article (including a ship or vessel, or a film, video or sound recording);

b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or

c) the getting, dressing or treatment of minerals;

in the course of any trade or business other than agriculture, and other than a use carried out in or adjacent to a mine or quarry;”

3.4 The second element of the definition of Class B1(c) is the limitation that the use must be one *“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”*.

3.5 Accordingly, in order for Deliveroo Editions to fall within the existing Class B1(c) planning permission relating to the Site, the use must be an industrial process and be able to be carried out without detriment to the amenity of any residential area. The relevant law is also set out in further detail in the ‘Legal Analysis’ section of the legal opinion. A description of the Deliveroo Editions operation is set out in the following section of this statement.

Section 4 Deliveroo Editions Operation

4.1 Deliveroo Editions are purpose built kitchens to get restaurants up and running in new areas with high demand and limited supply. Deliveroo Editions provides fully-equipped, state of the art kitchen units for restaurant partners. The kitchens are staffed and operated by restaurant partners. Food is prepared and cooked within these kitchens by the restaurant partners and delivered to the customers using Deliveroo riders, which consists of a mix of pedal cycles and scooters.

4.2 The concept operates as follows:-

- The customer logs on to the Deliveroo app and places an order with the restaurant kitchen located on the applicable Deliveroo Editions site;
- The restaurant receives notification of an order being placed and prepares and cooks the food at the relevant Deliveroo Editions site;
- When the food is nearly ready, the rider is notified to come to the relevant Deliveroo Editions site and pick it up;
- The rider collects the food from the relevant Deliveroo Editions site and delivers the food to the customer;
- Sales do not take place at the Deliveroo Editions site and there is no ability for customers to collect an order at the Deliveroo Editions site themselves. The transaction occurs on-line and is completed via the online app.

4.3 The Site accommodates 9 kitchens. 8 are currently in operation, but there is space for 10 restaurant brands in total – 2 operators will share one kitchen). The Site can be accessed from 08:30am on seven days a week by the restaurant partners. However, customers are only able to place orders on the app from 17:00 on Monday to Wednesday and from 12:00 on Thursdays to Sundays.

4.4 The Deliveroo Editions kitchens mirror casual dining in that they are busiest between the hours of 19:00 – 21:00. The volume of orders significantly reduces after 21:00.

4.5 Last orders are placed at 22:45 and the kitchens close at 23:00. The Kitchen ventilation system will be operational at approximately half speed for a minimum of an hour from the kitchen closing to alleviate any heat build-up occurring during the catering session. All industrial processes, plant equipment and noise generating operations will cease by 24:00.

4.6 As discussed in paragraphs 15-20 of the legal opinion, Deliveroo adopts a standard set of management principles that are implemented at Deliveroo Editions sites (where appropriate) to ensure that there is no detrimental impact upon the amenity of a residential area from noise, smell and fumes. In summary, these are as follows:-

Management principle	Measures
Travel Plan	<ul style="list-style-type: none"> • This includes the provision (where necessary) of an on-site Traffic Marshall, who is responsible for overseeing arrivals/departures and the behaviour of all individuals who access or work on site to ensure minimal disturbance; • Ensuring (through the Deliveroo app) that riders arrive at the site when the order is nearly ready to be despatched in order to prevent them congregating on site; • Ensuring that all food orders are collected from within the building, with an internal rider waiting area and welfare facilities provided to further minimise disturbance; • The provision of rider assembly points in areas as far from any nearby residential properties as possible; • Putting in place measures to limit any potential disruption caused by how riders access a site (as reviewed, where necessary, by a Traffic Marshall); • Ensuring that all riders registered with Deliveroo are contractually required to behave professionally, will have undertaken an on-boarding process, and key materials for this process will be readily available online; • The provision of signage on site reminding riders to leave the area as quietly as possible once the order has been despatched; and • Encouraging site staff to use sustainable measures such as cycling or public transport when arriving/departing
Delivery Management	<ul style="list-style-type: none"> • Each of the restaurant brands are required to provide Deliveroo with full details of the number and frequencies of deliveries to the site during the week. This information is subsequently reviewed by Deliveroo and where possible deliveries to the site will be combined with the other operators to reduce traffic movements; • Waste collection and delivery vehicles are provided with specific delivery windows to minimise any potential for

	<p>disturbance. The Deliveroo On-site Manager will be responsible for monitoring deliveries to the site within the agreed times and taking action where appropriate</p>
<p>Operational Management</p>	<p><u>Pre-launch</u></p> <ul style="list-style-type: none"> • Before selecting a Deliveroo Editions site, a robust appraisal process is undertaken with input from the professional consultant team, including planning, transport, noise and plant/ventilation advice. This process is critical to determining the suitability of the site and enables principles and parameters to be established to address any particular site-specific impacts; • For example, the noise survey will assess the background noise levels for each site and will confirm what is an acceptable noise level for the site to operate within having regard to each respective local authority’s policies and local circumstances. Similarly, the plant/ventilation engineer advises Deliveroo on the siting and routing of any plant equipment together with the level of acoustic mitigation required to meet the specified noise requirements and any required mitigation from odour; • Following the appraisal process, bespoke measures are tailored to each site in line with site specific circumstances which complement the standard set of mitigation measures which are employed across all sites; <p><u>Post launch</u></p> <ul style="list-style-type: none"> • Operating each Deliveroo Editions site within the noise levels identified as acceptable within the completed noise survey (as monitored by the On-site Manager); • Review of noise reports annually (or more if deemed necessary); • Ensuring temporary generators are only used where strictly necessary - and then, only used within strict operational times; • The implementation of a strict maintenance programme for any plant equipment to ensure all filters are regularly cleaned and replaced (where appropriate) in line with manufacturer’s recommendations.

4.6 Deliveroo also operates from the Site in accordance with a bespoke Operational Management Plan (OMP), which is attached at **Appendix 4**.

APPENDIX 4

4.7 In summary, the OMP includes the following management principles: -

Management principle	Measures
Access to the Site	<ul style="list-style-type: none"> • Access to the Site by riders will be by the Finchley Road entrance only and a message to this effect will be sent to any rider that accepts an order from this Site; • The gate providing access to the Site will be closed at all times the kitchens are open other than to provide access for delivery vehicles and for other users of the car park. The on-site traffic marshal is responsible for ensuring the gate remains closed and overseeing all arrivals/departures from the site.
Managing collections of Deliveroo orders	<ul style="list-style-type: none"> • Riders are required to park their bike/moped at the entrance gate by Dobson Close (which is closed) and walk on foot to collect orders from the Dispatch centre. This is monitored by an on-site traffic marshal; • The traffic marshal is responsible for ensuring that riders park safely and do not park on the pavements.
Deliveries to the Site	<ul style="list-style-type: none"> • Deliveroo will ensure that all deliveries to the site take place between the hours of 08:00-20:00 Monday to Friday, and 08:00-18:00 on a Saturday. Care will be taken to ensure that deliveries are coordinated outside of rush hours; • No deliveries will be permitted to the Site on a Sunday.
Noise Management	<ul style="list-style-type: none"> • A comprehensive Noise Impact Assessment has been undertaken by Noise Solutions Ltd which has demonstrated compliance with the London Borough of Camden’s requirement that plant rating noise level, calculated using the method BS 4142:2014, is at least 5dB(A) below the pre-existing background sound level, at 1m from the façade of the nearest noise sensitive premises; • The Site will operate within the noise levels outlined as acceptable by Noise Solutions Ltd to prevent disturbance or nuisance;

	<ul style="list-style-type: none"> Noise levels will be monitored to ensure that they are acceptable at all times and audits will be conducted.
Plant/extract	<ul style="list-style-type: none"> Deliveroo has commissioned a bespoke extraction system designed specifically for this Site by technical engineers, Chapman Ventilation, which has given careful consideration to the demands of the commercial kitchen operation (9 kitchens), nature of the cooking and the location of the Site; This includes highly-specialised plant equipment which will appropriately deal with noise, fumes and heat emanating from the cooking process, together with a strict maintenance programme in line with manufacturer's recommendations; The bulk of the equipment has been located internally within the building. However, careful consideration has been given to the location of the external extracts which have been positioned as high as possible on the back of the industrial building and are a significant distance from the nearest residential receptor; This, together with the vertical discharge and high discharge velocity (15m/s), ensures that the extract air is dispersed away from nearby residential properties, directly into the atmosphere.
Refuse Collection	<ul style="list-style-type: none"> Refuse collection is managed by Veolia, on behalf of Camden Council, and it is anticipated that there will be four waste collections per week of four 1,100L bins (three general waste and one recycling); All refuse and recycling is taken off site directly to the outside bins and site management are responsible for ensuring waste is stored appropriately.

4.8 The next section of this Statement will assess how the Deliveroo Editions operation comprises a Class B1c use in accordance with the definition set out in the UCO and the terms of the operative planning permission (ref: PL/9200229).

Section 5 Assessment of Lawfulness

a) Introduction

5.1 This application seeks to confirm that the Deliveroo Editions use operating from the Site falls within Class B1(c) of the UCO, which is the lawful use of the Site established through the operative planning permission (ref: **PL/9200229**).

5.2 In order to demonstrate that the use falls within Class B1(c), it is necessary to demonstrate that the use meets the two elements of the definition set out within the UCO as follows:-

- It is a use “*for any industrial process*”; and
- It is 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*”

5.3 We have based our assessment of the case in respect of the above criteria on the following evidence:-

- Legal opinion from Sasha White QC, which confirms that the Deliveroo Editions use does fall within use class B1(c);
- Operational Management Plan, prepared by Deliveroo;
- Noise Impact Assessment, prepared by Noise Solutions;
- Transport Statement, prepared by i-Transport.
- Kitchen Canopy Ventilation Details and Odour Maintenance Plan, prepared by Chapman Ventilation.

b) It is a use “for any industrial process”

5.4 A copy of the legal opinion from Sasha White QC is attached at **Appendix 5**.

APPENDIX 5

5.5 The analysis set out within paragraphs 30 – 34 of the legal opinion from Sasha White QC concludes that the preparation and cooking of meals at Deliveroo Editions sites (without any sales on Site and with no visiting members of the public) is a “*process for...the making of any article...in the course of any trade or business*” and hence is an “*industrial process*”.

5.6 In support, the legal opinion identifies The Land Use Gazetteer listing a “*food preparation place with no sales to visiting members of the public*” as falling within Use Class B1(c) and many decisions where judges, inspectors and local authorities have found that commercial kitchens are used for an industrial process.

c) **It is 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**

5.7 The analysis set out within paragraphs 35 – 40 of the legal opinion from Sasha White QC concludes that “*it is unlikely that the use at the Editions will cause a detriment to the amenity of any residential area.*”

5.8 Importantly, it notes at paragraph 36.5 that “*in assessing the impact of the use, account can be taken of mitigating measures*”. It confirms at paragraph 36.6 that it is not “*self-evident*” that a use must cause detriment to a residential area by the nature of the industrial process, bearing in mind the mitigation measures that might fit into place to eliminate or reduce those emissions. As set out in paragraph 37 of the legal opinion, the use at the Site will not result in the release of a number of emissions specified in Class B1(c); in fact, the only emissions that are potentially relevant from a Deliveroo Editions site are noise, smell and fumes.

5.9 Counsel reached the view that “*it is unlikely that the use at the Editions will cause a detriment to the amenity of any residential area*” on the basis of the standard set of management principles discussed in paragraphs 15-20 of the legal opinion and as set out in section 4 of this application. Counsel specifically identifies the ways in which these measures mitigate emissions from Editions sites at paragraphs 39.2 and 39.3 of the legal opinion.

5.10 However, it is important to highlight that, in addition to the standard set of management principles, Deliveroo tailors the on-site management plan to reflect site specific circumstances and a copy of the Operational Management plan (as discussed in section 4) prepared in respect of the Site is attached at **Appendix 4**.

5.11 The OMP has been informed by the following surveys, which consider the potential for noise, smell and fumes from the Site:-

- Noise Assessments, prepared by Noise Solutions (**Appendices 6**);
- Transport Statement, prepared by i-Transport (**Appendix 7**);

- Sirius Kitchen Canopy and Ventilation Details and Odour Maintenance Plan by Chapman Ventilation (**Appendix 8**)

i) Noise Assessment

5.12 Noise assessments have been undertaken by Noise Solutions Ltd in respect of the Site. These assess potential noise emissions from the Site arising from the plant/extract and from scooters arriving and leaving the Site. Copies of these Noise Assessments are attached at Appendix 6.

APPENDIX 6

5.13 The Noise Assessments for the Site draw the following conclusions:

- Predicted noise from the delivery scooters results in, at worst, a 'low impact' according to BS 4142:2014 and will not increase the internal noise levels within the nearest dwelling;
- The predictions demonstrate that cumulative noise from the proposed plant should be acceptable to Camden Council at all nearby receptors and all times, inclusive of suitable atmospheric-side attenuators fitted to the fresh air supply and kitchen extract systems.

5.14 Accordingly, the above demonstrates that the noise from scooters and the plant do not have a detrimental impact on the amenity of the residential area, with no ambient noise levels exceeding internal ambient noise targets during the daytime period.

ii) Transport Statement

5.15 A Transport Statement has been undertaken by i-Transport to provide an assessment of the transport impacts of the Site. Modelling has been undertaken on a 'worst case' scenario of all 9 kitchens operating. The Statement is attached at **Appendix 7**.

APPENDIX 7

5.16 This Statement concludes that the transport impacts are considered acceptable and would, therefore, not give rise to disturbance provided that the Site is managed in line with the OMP.

iii) Kitchen Ventilation Details and Odour Maintenance Plan

5.17 Each of the 9 internal kitchens is fitted with a Sirius kitchen ventilation canopy designed for air capture and containment (CCA). A copy of the manufacturer's brochure is attached at **Appendix 8**.

APPENDIX 8

5.18 The CCA system is designed specifically to prevent the spread of cooking fumes and heat. It works by emitting low-volume directed supply air inside the hood to create a negative pressure along the front lower edge of the canopy. This pressure change guides the rising thermal current into the canopy and toward high-efficiency grease filters.

5.19 These high-efficiency grease filters have been installed in each of the kitchens and will be maintained in accordance with manufacturer's recommendations. Sirius's filters provide outstanding filtration of grease and other particles with efficiency levels up to 94.6%, ensuring that fumes, grease and odours are captured before entering the extract duct and are therefore contained on site, and disposed of in a sustainable way when filters are cleaned and replaced. Indeed, a strict maintenance programme is to be implemented in line with Chapman Ventilation's and Manufacturer's recommendations. A copy of this maintenance programme is also attached at **Appendix 8**.

5.20 The OMP attached at **Appendix 4** confirms that the CCA system and Odour Maintenance Plan has been implemented at the Site and as a result, emissions from smells and fumes are minimal.

5.21 It has been demonstrated that Deliveroo Editions can operate within a Class B1(c) at the following locations:-

- Crouch End (LB Haringay);
- Blackwall (LB Tower Hamlets);
- Canary Wharf (LB Tower Hamlets);
- Nottingham (Nottingham City Council)
- Chapelton (Leeds City Council)

5.22 Copies of the relevant decision notices are attached at **Appendix 9**.

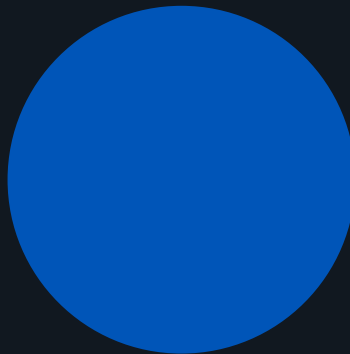
APPENDIX 9

d) Summary

- 5.23 Overall, it is concluded that the Deliveroo Editions operation is a Class B1(c) use as it comprises an industrial process and can be operated without detriment to the amenity of any residential area.
- 5.24 Accordingly, Deliveroo Editions operates in accordance with the operative planning permission for the Site (ref: PL/9200229).

Section 6 Conclusions

- 6.1 For the reasons set out in this Statement, it is sufficiently evident that, on the balance of probability, the Deliveroo Editions operation falls within Class B1c of the UCO and, therefore, the use is lawful at the Site.
- 6.2 It is considered that an appropriate level of evidence has been included within the submission and that, on the balance of probability having weighed all the available evidence, the application should be supported. We, therefore, respectfully request that a lawful development certificate be granted.



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