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23 March 2018

London Borough of Camden  
Development Management  
2<sup>nd</sup> Floor, 5 Pancras Square  
c/o Town Hall  
Judd Street  
London  
WC1H 9JE**BY PLANNING PORTAL  
REF: PP-06806467**

Dear Sir or Madam

**S191 TOWN AND COUNTRY PLANNING ACT – CERTIFICATE OF EXISTING LAWFUL USE APPLICATION  
10 GAYTON CRESCENT, HAMPSTEAD, LONDON, NW3 1TT**

On behalf of our client, Mr Lance Blackstone, we apply for a Certificate of Lawfulness of Existing Use or Development ("CLEUD") pursuant to Section 191 of the Town and Country Planning Act 1990 ("the Act") to confirm the lawfulness of the use of 10 Gayton Crescent ("the property") as a single residential dwellinghouse and the lawfulness of external works which have been made to the property.

The reason for the application stems primarily from a decision notice (application reference 19/1/G/TPD.55) issued by the Borough of Hampstead (acting under powers delegated by the London County Council) on 24 May 1960 for the proposed conversion of the property into two self-contained units which leaves doubt as to whether planning permission was actually approved or refused. A copy of the decision notice is provided in **Appendix 1**. Notwithstanding the historic decision, there is nevertheless a long recent period of use of the property as a single dwellinghouse for more than four years.

We are instructed to take an independent view on this matter and, in light of the evidence available to us, we conclude that the property's current use as a single residential dwellinghouse (Use Class C3) and works undertaken to the exterior of the building are lawful within the meaning of S191 of the Act.

**Current Arrangement of the Property**

10 Gayton Crescent is a single address laid out as a single family dwelling over three floors. The shared family living spaces are located on the ground floor level, which include the kitchen and lounge, whilst the four bedrooms and other ancillary living spaces, such as bathrooms and the study, are arranged on the upper two floors. The property is accessed from the ground floor via the hallway or via a rear access door through the utility room and kitchen.

As we understand, at some point in between 1995 and 2002, a single storey ground floor extension was made to the rear of the property to accommodate a larger kitchen and the main entrance door on the front elevation was replaced with a window (the "external works").

**Content of the Application**

The purpose of this application is therefore to confirm the lawful use of the entire property as a single dwellinghouse and that the external works are lawful.

To support the existing use of the property as a single dwellinghouse, the application is supported by the following information and evidence:

- This letter, providing an analysis of the history of the use of the property against the statutory provisions;
- A signed affidavit from Mr and Mrs Lance Blackstone (**Appendix 2**), the owners of the property since 9 February 2006, attesting as to the duration of the use as a single dwellinghouse and confirming that the external works were already in place when they purchased the property.
- A Valuation Report of the building (**Appendix 3**), dated 22 December 2005 and produced by Lamberts Chartered Surveyors, which was produced prior to Mr Blackstone purchasing the property in 2006 and which provides a description of the property as a “two-storey detached house with loft conversion”.
- A schedule of tenancies which sets out the occupants of the single dwelling from 28 May 2005 to 20 November 2017 (**Appendix 4-6**);
- Floorplan drawings dating back to a 1995 planning application which illustrate the configuration of the house as a single dwellinghouse (**Appendix 7**); and
- A current council tax record confirming the single entry of the ground, first and second floor of the property (**Appendix 8**).

In addition to the above documentation, in order to support the lawfulness of the external works which have been made to the property, the application is supported by:

- Drawings dating back to works undertaken to the property in 2002 which illustrate the external configuration of the property (**Appendix 9**);
- A photograph appended to the 2005 Valuation Report which illustrates the removal of the front entrance door and its replacement with a window (**Appendix 3**).
- A description of the Property in the 2005 Valuation Report which confirms that the property included a rear single storey extension (**Appendix 3**).

We kindly ask that the drawings of the property dated 2002, at **Appendix 9**, are identified on the Certificate as the lawful planning drawings.

### **Statutory Basis for this Application**

This application is made pursuant to Section 191 of the Town and Country Planning Act 1990 (“the Act”) to ascertain that the existing use of the property as a single residential dwelling and the external works undertaken to the building are lawful.

S191(2) of the Act sets out that uses are lawful when:

*(a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason) and:*

*(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

In respect to the latter clause (b), we are not aware of any enforcement notice in force on the property.

Having regard to S191(2) (a), and in view of the doubt surrounding the 1960 decision notice, this application is made on two separate bases:

1. That if the 1960 decision notice refused the conversion of the property into two flats and the property’s lawful use remained as a single dwellinghouse, the current use of the property as a single dwellinghouse

continues to be lawful and the external alterations were undertaken lawfully using permitted development rights under Part 1 Class A of The Town and Country Planning (General Permitted Development) Order 1995; and

2. That if the 1960 decision notice permitted the conversion of the property into two flats and the permission was implemented, the property has in any case been used continuously as one single dwellinghouse and the external alterations have been in place for significantly longer than the requisite four year period set out at S171B(2) of the Act.

Regardless of the interpretation of the 1960 decision notice, it can be concluded that under each basis the current use of the property as a dwellinghouse and the external alterations to the property are lawful.

These points are considered in more detail below.

### **History of the Property**

In acknowledgment of the doubt surrounding the 1960 decision notice, the evidence provided within this application demonstrates conclusively that:

- An application was submitted to the London Borough of Camden on 18 August 1995 for alterations to the property including a new rear staircase, an extension at ground floor level and internal re-planning. The submitted application form refers to the property as a *"single family dwelling"* with 3+ bedrooms.
- A series of elevational and floorplan drawings were submitted alongside the application which illustrate the property as existing and proposed. The existing plans again demonstrate that the property was in use as a single dwelling at this time, with all shared living facilities located on the ground floor. The plans show that the external works had not been undertaken at this point in time.
- Works including the creation of a parking space and associated pathway to the front of the property were undertaken in 2002. The drawings associated with these works and dated November 2002 demonstrate that the property at this time was still in use as a single dwellinghouse, with the shared living facilities (kitchen and lounge) located on the ground floor only. These drawings also illustrate that the external works were in now place at this time and therefore must have been undertaken at some point between 1995 and 2002.
- The entire property was purchased by the applicant, Mr and Mrs Blackstone, on 9 February 2006 from Galit Herskovitz. At the time of the purchase the property was arranged and in use as a single dwellinghouse.
- Prior to purchasing the property, Mr Blackstone obtained a Valuation Report from Lamberts Chartered Surveyors, in which under Clause 6 of the Report it is evident that the property was in use as a single dwelling upon purchase and contained an existing rear single storey extension. The photograph in the appendix also shows that a window was in place on the front elevation.
- Following the purchase of the property, Mr Blackstone leased the property to tenants over approximately a 12 year period. The property was occupied under five separate tenancy agreements between May 2005 and November 2017.
- Mr and Mrs Scherrer and their children occupied the property from 25 May 2005 to 28 May 2007.
- The property was then occupied by Mr and Mrs Rathvon from 9 October 2007 to 1 January 2011.
- Mr and Mrs Lockhart and their family, occupied the property from 21 January 2011 to 20 November 2017.
- The current council tax record confirms the single entry of the ground, first and second floor of the property.

### **Lawful Use of the Property as Single Dwelling**

Should the 1960 application have been refused, the lawful use of the property as a single dwellinghouse would have remained. As there have been no permissions since this date which would indicate that the use of the property would have changed, the lawful use of the property would continue to be as a single family dwellinghouse.

Subject to this being the case, the external alterations to the property would have been undertaken using permitted development rights under Part 1 Class A of The Town and Country Planning (General Permitted Development) Order 1995. This is in acknowledgement that the property falls within the Hampstead Conservation Area and which there is an Article 4 Direction which removes some permitted development rights. In any case, the works were undertaken between 1995 and 2002 whilst the Article 4 Direction came into force on 1 September 2010.

### **Continuous Use of the Property as a Single Dwelling for 4 Years or More**

Irrespective of whether the 1960 permission refused or approved the conversion of the property into two flats, it is evident that the property has been used as a single dwellinghouse in its entirety continuously for a period of four years or more preceding the date of this application. Therefore it achieves lawful status by virtue of S191(2) and S171B(2) of the Act.

S191(2)(a) explains that a use is lawful when no enforcement action may be taken as a result of the relevant time period having expired. As discussed above we are not aware of any enforcement notice in force on the property.

S171B(2) sets out that:

*“where there has been a breach of planning control consisting in the change of use 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 of the breach”.*

The evidence provided with this application explains that the property has been used as a single dwellinghouse since at least 1995 – the year in which an application was submitted to the London Borough of Camden on 18 August 1995 for alterations to the property including a new rear staircase, an extension at ground floor level and internal re-planning.

The Valuation Report, which was produced prior to Mr Blackstone purchasing the property in 2006, refers to 10 Gayton Crescent as a *“two-storey detached house with loft conversion and rear single storey extension”*.

The affidavit and schedule of tenancy agreements provided by the Applicant further demonstrates that the property has been leased and occupied as a single dwelling by tenants for a period of 12 years, spanning from May 2005 to November 2017.

Finally, council tax records confirm the single entry of the ground, first and second floor of the property.

Therefore there is no evidence to suggest that any part of the house has been used for any other purpose other than a single family dwelling over, at least, the last 23 years.

### **Implementation of the External Alterations for 4 Years or More**

As outlined in the above planning history review, it is evident that the external alterations made to the property have existed for a period of four years or more preceding the date of this application.

It can be demonstrated that at some-point between 1995 and 2002 (as demonstrated by the dated drawings), that works were undertaken to the exterior of the property which include a ground floor rear extension and the replacement of the front entrance door with a window. The change to the front elevation of the property is also evident in the photograph accompanying the 2005 Valuation Report and the rear extension is also explicitly referred to in this document.

Therefore there is robust evidence to suggest that the external alterations to the building have been implemented more than four years ago, and therefore they are considered to have achieved lawful status by virtue of S191(2) and S171B(2) of the Act.

### **Conclusion**

This application is made because of a 1960 decision notice which leaves doubt as to whether a single family dwelling was granted planning permission to be converted into two self-contained flats.

This application is therefore made on two separate bases:

1. That if the 1960 decision notice refused the conversion of the property into two flats and the property's lawful use remained as a single dwellinghouse, the current use of the property as a single dwellinghouse continues to be lawful and the external alterations were undertaken lawfully using permitted development rights under Part 1 Class A of The Town and Country Planning (General Permitted Development) Order 1995; and
2. That if the 1960 decision notice permitted the conversion of the property into two flats and the permission was implemented, the property has in any case been used continuously as one single dwellinghouse and the external alterations have been in place for significantly longer than the requisite four year period set out at S171B(2) of the Act.

Regardless of the interpretation of the 1960 decision notice, it can be concluded that under each basis the current use of the property as a dwellinghouse and the external alterations to the property are lawful.

In respect of the latter, it is apparent from the evidence provided that the property in its entirety has been used continuously as a single residential dwelling for longer than four years and the external works have been in place for longer than four years. The evidence accompanying this application is conclusive on this point and puts the matter well beyond 'the balance of probabilities', this being the relevant test to be applied in the determination of this application.

We politely ask therefore that this application for a Certificate of Lawfulness under S191 of the Town and Country Planning Act 1990 is approved without delay.

If you require any further clarification on this matter, please do not hesitate to contact either myself ([tim.miles@montagu-evans.co.uk](mailto:tim.miles@montagu-evans.co.uk) / 020 7312 7444) or Sam Stackhouse ([sam.stackhouse@montagu-evans.co.uk](mailto:sam.stackhouse@montagu-evans.co.uk) / 020 7866 8620) at this office in the first instance.

Yours faithfully

