

## **Planning Supporting Statement**

### **Lawful Development Certificate (existing)**

126 Boundary Road, St John's Wood,  
London, NW8 0RH

Lawful Development Certificate (existing) for use as a  
Language School

at

126 Boundary Road, St John's Wood, London, NW8 0RH

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Planning Supporting Statement

on Behalf of

Valencia Investments Ltd

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October 2018

**DMH Stallard LLP**  
**Griffin House**  
**135 High Street**  
**Crawley**  
**West Sussex**  
**RH10 1DQ**

**Tel: 01293 663518**  
**Fax: 01293 663520**  
**Email: [heidi.copland@dmhstallard.com](mailto:heidi.copland@dmhstallard.com)**

**DMH Stallard LLP Ref: 321978-1**

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**FINAL**

**Prepared by: CF**

**Checked by: HC**

**Date: October 2018**

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## 1. Introduction

- 1.1 This statement is submitted in support of an application for a Lawful Development Certificate (LDC) for the existing D1 class use of 126 Boundary Road, St John's Wood, London, NW8 0RH ("the Property"). This application seeks to obtain an LDC as legal confirmation that:
- the lawful use of the ground floor and basement of the Property is D1 use on account of its continued use as a language school for more than 10 years, and
  - the use of the entire Property may change to another use within D1 class without the need for planning permission.
- 1.2 This statement sets out a brief history of the Property and the background, and then addresses the legal basis for the application and the lawfulness of the use.
- 1.3 It is considered that the evidence submitted demonstrates that the D1 use of the ground floor and basement is lawful as these floors have been used continuously as a part of the a language school (already authorised at first and second floor levels) for in excess of the ten year qualifying period by virtue of the provisions of Section 191 of The Town and Country Planning Act 1990.
- 1.4 It is further considered that there is no impediment to the whole Property being used for an alternative D1 use.

## 2. The Site and Surroundings

- 2.1 The Property is 126 Boundary Road , St Johns Wood which is on the north eastern side of Boundary Road as shown on the aerial map below.



Application Site shaded red [Source: <https://magic.defra.gov.uk/MagicMap.aspx>]

- 2.2 The Property comprises a four storey building (basement to second floor) which is located in a row of shop fronts which are mostly retail or offices at ground floor level with a mix of uses above. Some neighbouring properties also have lightwells and staircases to provide separate access to the basements, the Property does not.

### 3. Site History & Background

#### **Relevant Planning History**

- 3.1 An application for use of the first and second floors of the building for light industrial or office purposes was refused on 19/02/1951.
- 3.2 An application for use of the ground floor and basement as a social club was refused on 29/07/1957.
- 3.3 An application for use of the first and second floors as a language school and reading room was permitted in 06/06/1958.
- 3.4 There is no subsequent planning history.

#### **Background to the application**

- 3.5 The 1958 planning permission permitted the use of the first and second floors as a language school and the application form indicates that the ground floor of the Property at the time of the application was in use as a book shop.
- 3.6 The D1 (language school) use of the first and second floors was permitted by the 1958 planning permission and it is understood that the language school use commenced then. This application seeks to establish as lawful the D1 use of the ground floor and basement of the Property.
- 3.7 The photographs at Appendix B show that the entire building is accessed from the door on the left hand side at ground floor level. There is no separate access from the street to either the upper floors (which benefitted from the planning permission for a language school and reading room) or the basement.
- 3.8 The photographs provided at Appendix B show that the only bathrooms in the building are at basement level.
- 3.9 The exterior photographs obtained from Google Street View attached at Appendix F show that the ground floor was part of the language school in June 2008 up to June 2017 and that access to the building is gained via the door on the left hand side of the ground floor frontage. This indicates that the building was in a single use with no retail unit at ground floor level from June 2008 up to June 2017, although it is likely that this has been the case for longer given the layout of the building (with the only bathrooms in the basement) and the fact that the language school has been in operation since 1958.

- 3.10 The photographs at Appendix B show that the whole building including the ground floor and basement is part of the language school. This is also confirmed by the Facebook extracts at Appendix E where one of the photographs shows the basement in use as part of the language school in 2014 and another shows the ground floor in use as part of the language school in 2012.
- 3.11 The Property is currently vacant but there has been no intervening change of use of the building, it has for many years been in use as a language school and is still laid out as such.



## 4. The Legal Test

4.1 As this is an application for a LDC for an existing use, consideration of the application is strictly limited to whether, “on the balance of probability” the use is, or is not lawful. Such applications are not required to be considered against the policies of the Development Plan. Furthermore, the planning merits of the LDC application cannot be taken into consideration.

4.2 In determining LDC applications, the National Planning Practice Guidance provides that 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 is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.

4.3 Section 191 of the Town and Country Planning Act 1990 states:

*“For the purposes of this Act uses and operations are lawful at any time if:*

- a) no enforcement action may then 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”.*

4.4 By virtue of Section 171b of the Town and Country Planning Act 1990 in relation to changes of use (other than to a single dwellinghouse) ‘*no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.*’

4.5 Section 191 goes on to state:

*“If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect”.*

### Summary of Evidence

#### *Use of Ground and Basement Floors*

4.6 The above-mentioned extracts provide the legal basis for this application. The Applicant provides the following evidence to demonstrate that the ground

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floor and basement of the Property has been in D1 use along with the first and second floors (as granted by the 1958 planning permission) for a period in excess of ten years.

- 4.7 **Appendix A:** Copy of the 1958 application form and decision notice for the planning permission for use of the first and second floors of the Property as a language school and reading room. The application form indicates that the ground floor of the Property at the time of the application was a book shop. The decision notice states that the use of the ground floor as a retail shop did not constitute development requiring planning permission. The decision notice does not attach any additional conditions to the permission nor seek to impose any restrictions on the use.
- 4.8 **Appendix B:** Photographs of the interior of the Property taken in July 2018 which show all four storeys occupied by the language school.
- 4.9 **Appendix C:** Extract from websites (studystay.com and el-go.com) confirming the language school use of the Property.
- 4.10 **Appendix D:** Email from the British Council Accreditation Unit confirming that the Property was accredited as a language school continuously for the period when their digital records commenced from 12 December 2006 until 12 December 2017.
- 4.11 **Appendix E:** Extracts from St Johns Wood Academy Facebook page with a selection of posts dating back to December 2012 including photographs showing the language school use of the entire Property.
- 4.12 **Appendix F:** Google Street View image photographs of the street showing the language school use in June 2017, June 2016, June 2015, July 2014, September 2012, April 2012 and June 2008.
- 4.13 **Appendix G:** A business rates bill describing the Property as “school and premise” confirming the use.

*Future alternative D1 use*

- 4.14 There was no condition attached to the 1958 planning permission (granting permission for the language school) restricting the use of the premises. Whilst that permission was granted before the Use Classes Order existed and therefore the concept of D1 did not exist at the date of grant, the modern day interpretation of the permission would be that it is a grant of permission for a D1 use. The evidence submitted indicates that there has been no material change of use since the grant of the permission and that the use as a language school has continued since 1958. Therefore, it is considered that by virtue of the provisions of the Use Classes Order and the General Permitted Development Order, a change of use of the Property to a different use within Use Class D1 would not require planning permission.

## 5. Conclusions

- 5.1 The evidence submitted in support of the LDC is precise and unambiguous and sufficiently demonstrates, 'on the balance of probability', that the use of the ground floor and basement of 126 Boundary Road as a D1 use is lawful by virtue of the provisions of section 191 and section 171b of the Town and Country Planning Act 1990 given that it commenced in excess of ten years preceding the date of the submission of the LDC application and has been continuous. Whilst the Property is currently vacant, there has been no intervening use and the D1 use is not abandoned – it is still laid out as a language school.
- 5.2 The use of the entire Property is therefore D1. By virtue of the provisions of the Use Classes Order and the General Permitted Development Order, a change of use of the Property to a different use within Use Class D1 would not require planning permission.
- 5.3 It is respectfully requested that the Council issue a Certificate of Lawful Use certifying:
- The lawful D1 use of the ground and basement floors of the Property.
  - That a change of use of the Property to any other D1 use would not require planning permission.