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RE: Certificate of Lawful Existing Use or Development (CLEUD)
Flats A – D (1 – 4), 59 - 61 Camden High Street, London, NW1 7JL

1 Introduction

- 1.1 This report is submitted on behalf of Abbee Limited in support of an application for a Certificate of Lawful Existing Use or Development (CLEUD), for residential flats within Flats A – D (1 – 4), 59-61 Camden High Street, London, NW1 7JL.
- 1.2 This application is submitted in order to regularise the use of the 4 self-contained flats A and B (First floor) and C and D (Second Floor) within 59 - 61 Camden High Street as being in (Class C3) residential use. Based on the evidence we have gathered, these flats have provided fully self-contained residential accommodation since at least April 2008 and so (Class C3) residential use has thus become the lawful use through the passage of time.
- 1.3 This report reviews the planning history of the site and the factual evidence that has been gathered in respect of the historical use of 59 - 61 Camden High Street.
- 1.4 This evidence identifies and provides confirmation for each of the 4 flats comprising Records of rent payment, Council tax confirmation, Thames water confirmation, Energy Performance Certificates, Building insurance schedules, a Statutory Declaration from the landlords Power of Attorney and the provision of a Deposit Protection Certificate for Flat B.

2 Application Site

- 2.1 The application site comprises an existing pair of terraced properties situated on southern side of Camden High Street, close to its junction with Miller Street. The property is 3-storeys high, is not listed but is located within Camden Town Conservation Area and is also located within Camden Town Centre. This application relates to the first and second floors which is currently occupied by 4 flats.
- 2.2 The property was acquired by the applicant, Abbee Limited, on 8 April 2008. At the time of acquisition, the Property was already divided into 4 flats and it appeared that it had been so for quite some time.

3 Planning History

- 3.1 No relevant planning history;
- 3.2 For clarification, no Enforcement Notice has ever been issued in respect of the property.

4 The Established Lawful Use

- 4.1 The statutory requirements for obtaining a CLEUD and the criteria for determining such an application are contained in Section 191 of the Town and Country Planning Act 1990.
- 4.2 The National Planning Practice Guidance relating to 'Lawful Development Certificates' makes clear that 'the applicant is responsible for providing sufficient information to support an application'
- 4.3 In considering the evidence as you will be aware the relevant test is the "balance of probability". Authorities are advised that if they have no evidence of their own to contradict or undermine the Applicants version of events there is no good reason to refuse the application provided the Applicant's evidence is sufficiently precise and unambiguous (Para.8.15 of Circular 10/97 refers).

4.4 In considering the (Class C3) dwellinghouse use, the Courts have held that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. This is reflected by Circular 08/2010 'Changes to planning regulations for dwellinghouses and houses in multiple occupation', which considers 'the common feature of all premises which can be generally be described as dwellinghouses is that they are buildings that ordinarily afford the facilities required for day to day private domestic existence.'

4.5 Circular 08/2010 considers that the criteria for determining whether the use of particular premises should be classified within the C3 use class include both the manner of the use and the physical condition of the premises. Paragraph 9 of the circular identifies that:

'Premises can properly be regarded as being used as a single dwellinghouse where they are:

- **a single, self-contained unit of occupation which can be regarded as being a separate 'planning unit' distinct from any other part of the building containing them;**
- **designed or adapted for residential purposes-containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse;**

4.6 In determining what constitutes a 'self-contained flat' Section 254(8) of the Housing Act (2004) is helpful in defining that a self contained flat 'means a separate set of premises (whether or not on the same floor) -

(a) which forms part of a building;

(b) either the whole or a material part of which lies above or below some other part of the building; and

(c) in which all three basic amenities are available for the exclusive use of its occupants.

[whereby]

“basic amenities” means—

(a) a toilet,

(b) personal washing facilities, or

(c) cooking facilities;

- 4.7 All 4 of the flats subject of this application are fully self-contained, with lockable front doors and sole access to the cooking, personal washing, toilet and sleeping facilities contained within each flat and so meet all the criteria to be considered fully self-contained (Class C3) residential units.
- 4.8 In terms of establishing the (Class C3) use of the 4 flats within 59 - 61 Camden High Street, Section 171B(2) of the Town and Country Planning Act 1990 states ‘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’.
- 4.9 It is also made clear in the guidance (at paragraph 009) that, when determining any application for a CLEUD, the ‘local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful [as] planning merits are not relevant at any stage in this particular application or appeal process.’
- 4.10 The breach in the case of 4 flats within 59 - 61 Camden High Street, took place prior to 2008. Each of the 4 single dwelling houses created has thus been in existence for in excess of the requisite four year period.
- 4.11 We would respectfully draw your attention to the most recent Case Law relevant to such conversions – Baker v Secretary of State for the Environment, Transport and Regions (2001) JPL1299. The Court held that reference to a “building” in Section 171B(2) included a part of the building, which meant that no enforcement proceedings could be taken once a part of the building had been used as a single dwelling house for four years or more.

4.12 Section 191(2) of the Act states that uses and operations are lawful if no enforcement action may be taken in respect of them including if the time for enforcement action has expired. As these 4 flats have existed for more than four years the time for enforcement action has expired and thus, in accordance with Section 191(2), the use as 4 self-contained flats is now lawful.

5 Evidence

5.1 This section summarises the principal findings of the evidence that has been gathered and demonstrates that the following flats within 59 - 61 Camden High Street have been in use as self-contained (Class C3) residential accommodation since at least April 2008:

5.2 These flats have been used as fully self-contained (Class C3) residential accommodation as defined by the Use Class Order for in excess of four years, and so this has become their established lawful use.

5.3 The evidence relating to use of all 4 flats as self-contained (Class C3) residential accommodation is as follows:

Council Tax Confirmation

5.4 Council Tax records for the property identify the 4 flats on the first and second floors as being subject to Council Tax since at least 25 October 2002:

- **Flat A (1):** With effect from **22/02/2003;**
- **Flat B (2):** With effect from **01/04/2003;**
- **Flat C (3):** With effect from **25/10/2002;**
- **Flat D (4):** With effect from **27/05/2011;**

Thames Water Confirmation

5.5 Thames Water records for the property identify the 4 flats as being setup on their system since at least 09 June 2002:

- **Flat A (1):** With effect from **24/01/2013;**
- **Flat B (2):** With effect from **09/06/2000;**
- **Flat C (3):** With effect from **29/04/2002;**
- **Flat D (4):** With effect from **25/06/2002;**

Energy Performance Certificates

5.6 Energy Performance Certificates for the property identify the 4 flats on the mid (first) and top (second) floors of the property as being assessed since the 15 September 2010:

- **Flat 1 (A):** Date of Assessment **15/09/2010;**
- **Flat 2 (B):** Date of Assessment **15/09/2010;**
- **Flat 3 (C):** Date of Assessment **03/08/2010;**
- **Flat D (4):** Date of Assessment **11/10/2013;**

Records of rent payment

5.7 Records of rent payments from 01/01/2014 to present demonstrating that rent payments have been received from tenants of the 4 flats, which is evidence of occupation of the flats over this period.

Building Insurance Schedules

5.8 Copy of email and Building Insurance Schedules for the property identify the 4 flats since at least 2008 with Insurance Schedules since 2014 identify the 4 flats to the first and second floors (No. 008 Page 2: Premises Description Clause);

Deposit Protection Certificate

5.9 Copy of Deposit Protection Certificate identifies Flat B 59 – 61 Camden High Street NW1 7JL and also confirms '***Date Deposit Collected from the Tenant: 09 September 2010***';

Statutory declaration of Nicholas Charles (Acting under a Power of Attorney for the owner and applicant Abbey Limited) dated 06 February 2019

5.10 4 flats identified as fully self-contained from at least April 2008.

Photographs and floorplans

5.11 Photographs and floorplans are provided showing the flats to be provided as self-contained residential flats.

Summary of evidence & Conclusion

- 6.1 All the evidence collated regarding the use of the flats across first and second floors of 59 – 61 Camden High Street NW1 7JL, identifies, on the balance of probability, 4 flats to have been in continuous use as fully self-contained (Class C3) flats for in excess of four years. The period covered by each piece of evidence is set out above within this report for ease of reference.
- 6.2 The evidence provided demonstrates that all 4 flats subject of this application for a CLEUD have been provided as fully self-contained (Class C3) flats for in excess of four years. There are no shared facilities whatsoever. Each unit is wholly self-contained with the full range of services required for day to day living.
- 6.3 There is no evidence of any other use of any of the 4 flats since at least April 2008.
- 6.4 The accompanying application for a Certificate of Lawful Existing Use or Development (CLEUD) has been submitted to regularise the use of these flats within the property and eliminate any uncertainty currently surrounding their lawful use.
- 6.5 The findings of this report confirm the established use of all 4 flats.

We trust that you will agree that sufficient evidence has been submitted to prove the lawfulness of the use on the balance of probability.

It is requested therefore that a CLEUD is issued to regularise their permitted use.

- 6.6 Should the Planning Officer to whom this application is allocated wish to inspect the premises internally I would be grateful if he/she could contact me to make the necessary arrangements.