

Matthew Dempsey  
Planning Department  
The London Borough of Camden  
5 Pancras Square  
London  
N1C 4AG

Our ref: BAS26/1  
Direct dial:   
david.evans@keystonelaw.co.uk

20 March 2019

Dear Sir,

**42 Fordwych Road, London NW2 3TG**

This firm has been instructed by Base Sports Limited and its planning adviser PPM Planning Limited (PPM) to provide this written opinion on the planning status of the above mentioned property. The purpose of this advice is so that it can be considered by the London Borough of Camden ("the Council") in determining the future development of 42 Fordwych Road, London NW2 ("the Property").

In this regard we ask that you please take account of the following:

*Introduction*

1. In drafting this advice we have relied solely on briefings from PPM and reviewing the online planning history file maintained by the Council in respect of the property.
2. In terms of the planning history available on file this amounts to the following:

- Certificate of Lawfulness for use of the property as 3 self-contained flats (1 x 2 bedroom & 2 x 1 bedroom); ref no. 2018/5135/P, registered 7 December 2018. Status: Awaiting determination.
- Loft conversion with rear & side dormers submitted; ref. no. 2017/2411/P, registered 12 May 2017. Status: Withdrawn
- Erection of rear and side ground floor extension; ref. no. 2017/2410/P, registered 11 May 2017. Status: Withdrawn

3. In terms of the facts as presented by PPM Planning this is summarised below:

- It is understood that the property was originally built as a single house, perhaps 100 years ago or more. Subsequently it has been subdivided into smaller units of residential accommodation and is now arranged as four self-contained residential units, referred to here as “the Flats”.
- Each of the Flats is occupied by no more than two people.
- This layout has subsisted for a number of years now.
- The Property has never been registered and licensed as an HMO by the Council, nor has it so far as we are aware been deemed to be one under the discretionary licensing powers.

4. This background gives rise to three planning and housing law questions, as follows:

- a) What is the appropriate planning unit – or planning units – to consider here?
- b) What is the planning use of the Property and its constituent parts?
- c) What, if anything, is the relevance of Housing Law position to the Planning Law position?

5. In addressing these questions we set out the applicable law and consider the facts in relation to that law.



#### *The Planning Unit Question*

6. The term “the planning unit” is the starting point for considering whether there has been a material change of use from whatever use previously existed. Bridge J. in *Burdle v Secretary of State* [1972] 3 All ER 240 held “*it may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.*”
7. It follows that the starting point for considering the planning status of the Property is how it is occupied. In our view it is currently occupied as four separate residential units – each of which is its own “planning unit” – and in terms of use, each unit is a separately occupied self-contained “dwellinghouse”, that is, “the Flats”. This of course engages the next consideration, namely that of “use”.

#### *The Use Question*

8. The term “dwellinghouse” is not defined in statute. The case of *Gravesham BC v Secretary of State* [1982] 47 P&CR 142 however adopted one that is usually followed by decision makers. McCullough J. held that a dwellinghouse is “*a building affording the facilities required for day-to-day private domestic existence*”. The term “building” in planning law includes “part of a building”; see section 336 Town and Country Planning Act 1990. It is clear then that this judgment applies equally to self-contained flats in the same way that it applies to free-standing houses.
9. The Flats in this case each provide their occupiers with all the facilities for day-to-day private domestic existence. It therefore follows that it is right and proper to describe these units as “dwellinghouses” for the purposes of planning law.
10. It is considered that the Flats in this case fall within the C3 use class of the Use Classes Order 1987 (as amended). This use class relates to dwellinghouses and it states:

#### **Class C3. Dwellinghouses**

*Use as a dwellinghouse (whether or not as a sole or main residence) by—*

- a) a single person or by people to be regarded as forming a single household;*
- b) not more than six residents living together as a single household where care is provided for residents; or*



- c) *not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4).*

### **Interpretation of Class C3**

*For the purposes of Class C3(a) "single household" is to be construed in accordance with section 258 of the Housing Act 2004.*

11. As noted in the definition, in respect of Class C3(a) only, the term "single household" is defined by reference to Section 254 of the Housing Act 2004. This makes clear that a single household is either comprises members of the same family or their circumstances fall within the description specified in the Licensing and Management of House in Multiple Occupation and Other Houses (Miscellaneous Provisions)(England) Regulations 2006 (SI 2006/373).
12. There is no statutory definition of single household for the purposes of C3(c) although the courts have considered the issue on a number of occasions. Given that the occupancy in the case of each Flat is no more than two people the limitations imposed by s.254 in the case of C3(a) or case law in respect of C3(c) are not applicable.

### *The Housing Law Question*

13. Houses in multiple occupation (HMOs) have long been controlled by parallel legislation in the various housing acts. In HMOs unrelated individuals share basic amenities in residential accommodation. This is held to be a sui-generis, use save where there are between three and six residents, in which case the use is deemed to fall within the C4 use class.
14. The Housing Act 2004 regulates HMOs. Part 1 prescribes a system of assessing housing conditions generally. Parts 2 and 3 relates to the licensing of accommodation including HMOs. Part 4 provides for controls of such accommodation. Parts 5 and 6 are not relevant. Part 7 contains supplemental provisions. Relevant here are sections 254 and 257.
15. Section 257 states:



**HMOs: certain converted blocks of flats**

1) For the purposes of this section a “converted block of flats” means a building or part of a building which—

- i. has been converted into, and
- ii. consists of,

*self-contained flats.*

(2) This section applies to a converted block of flats if—

(a) building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and

(b) less than two-thirds of the self-contained flats are owner-occupied.

(3) In subsection (2) “appropriate building standards” means—

(a) in the case of a converted block of flats—

i) on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulations 1991 (S.I. 1991/2768), and

ii) which would not have been exempt under those Regulations,

*building standards equivalent to those imposed, in relation to a building or part of a building to which those Regulations applied, by those Regulations as they had effect on 1st June 1992; and*

(b) in the case of any other converted block of flats, the requirements imposed at the time in relation to it by regulations under section 1 of the Building Act 1984 (c. 55).

(4) For the purposes of subsection (2) a flat is “owner-occupied” if it is occupied—

(a) by a person who has a lease of the flat which has been granted for a term of more than 21 years,

(b) by a person who has the freehold estate in the converted block of flats, or

(c) by a member of the household of a person within paragraph (a) or (b).

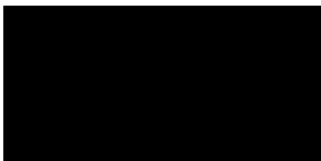
*(5) The fact that this section applies to a converted block of flats (with the result that it is a house in multiple occupation under section 254(1)(e)), does not affect the status of any flat in the block as a house in multiple occupation.*

*(6) In this section "self-contained flat" has the same meaning as in section 254.*

16. Section 254 Housing Act 2004, as well as setting out what is meant by the term "single household" for the purpose of use class C3(a), also sets out three test for determining whether a building - or part of a building - is an HMO. Specifically these are: "the standard test"; "the self-contained flat test"; and "the converted building test". A building can be declared to be an HMO under Section 255 Housing Act 2004 by reference to the tests found in Section 254 and or the provisions of Section 257.
17. The effect of Section 257 is that where a building has been converted into self-contained flats and those works of conversion did not meet the required standards under the Building Regulations 1991 **and** less than two-thirds of the resulting flats are owner occupied then the property in question can be deemed to be an HMO by way of s.255. If so this means it can be licensed, controlled and regulated by the Council under the powers in the Housing Act 2004.
18. It is clear from the above mentioned law that while for purposes of planning control the Flats are deemed to be dwellinghouses falling within use class C3 while at the same time they are at the same time capable of being deemed as forming an HMO for the purposes of controls under the Housing Act 2004, in the event that they fail to meet the Building Regulations standards and the owner-occupier requirements. It follows therefore that in considering and determining any future planning application the starting point for assessing the Property's existing use is that of four residential units within the C3 use class not as an HMO.

We trust this advice is clear. Please let us know should you have any questions.

Yours faithfully,



**David Evans**  
**Consultant Solicitor**  
**Keystone Law**

