

Development Control Planning Services
London Borough of Camden
Judd Street
London
WC1H 9JE

Submitted online via Planning Portal on gov.uk

17 April 2019

Dear Sirs,

**Re: Application for certificate of lawfulness for existing use or development (CLEUD)
– The Village School, 2 Parkhill Road, London NW3 2YN**

1. We act for Mrs Carol Gay (the **Applicant**), the owner of the freehold property known as 2 Parkhill Road, London NW3 2YN (the **Property**) and, with Mrs Ellen Bolsom, the owner of The Village School (the **School**), which is situated at the Property. We write in relation to the enclosed application for a certificate of lawfulness for existing use of the Property as school in Use Class D1 (the **Application**).
2. The Application is submitted pursuant to Section 191 of the Town and Country Planning Act 1990 (**TCPA 1990**).

Enclosures

3. We enclose the following in relation to the Application:
 - a. a completed application form;
 - b. a statutory declaration made by the Applicant under the Statutory Declaration Act 1835; and
 - c. a statutory declaration made by Mrs Ellen Bolsom under the Statutory Declaration Act 1835.

Legal framework

4. Under Section 191(2) TCPA 1990, a use is lawful if:
 - (a) no enforcement action may then be taken in respect of it (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) it does not constitute a contravention of any of the requirements of any enforcement notice then in force.
5. Under Section 171B(3) TCPA 1990, no enforcement action may be taken in respect of a change of use to Use Class D1 after the end of the period of ten years beginning with the date of the change of use.
6. As no enforcement is presently in force in relation to the use of the Property, the present use of the Property as a school in Use Class D1 is lawful and a CLEUD must therefore be granted (Section 191(4) TCPA) if satisfactory information is provided to establish that, at the time of the Application, the current use of the Property has been continuing for more than ten years.
7. The National Planning Policy Guidance makes clear that, in determining an application for a CLEUD planning merits are not relevant (paragraph 009, Lawful development certificates).
8. The onus is on the Applicant to prove, on the balance of probabilities, that a CLEUD ought to be issued (*F W Gabbittas v Secretary of State for the Environment and Newham LBC* [1985] JPL 630).
9. The Ministry of Housing, Communities & Local Government guidance '*Lawful development certificates*' states that:

In the case of applications for existing use, 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The School

10. The Village School is an independent preparatory school for girls aged three to eleven. The School is rated outstanding by OFSTED.
11. The School was founded in 1985 by the Applicant and Mrs Prior and originally operated in rented premises in Tufnell Park. The Applicant and Mrs Prior purchased the Property from The Mayor and Burgesses of The London Borough of Camden in

1993 and the School began operating in the Property at the start of the Summer Term 1993.

12. In 1999, the Bigsby Hall annex was opened, providing approximately 2,000 square feet of additional multi-purpose space at the Property.
13. The Applicant and Mrs Prior jointly owned the Property and continued as co-headmistresses of the School until 2007, when Mrs Prior retired and the Applicant became the sole owner of the Property and headmistress of the School.
14. In 2009, the Applicant entered into a partnership with Mrs Bolsom, who became a fixed salaried partner of the School and its deputy headmistress.
15. The Applicant has therefore been the continuous owner (or co-owner) of the Property since it was purchased in 1993 and the headmistress (or co-headmistress) of the School since it was founded in 1985.

Use of the Property since 1993

16. The statutory declarations of the Applicant and of Mrs Bolsom and the evidence submitted herewith clearly demonstrate:
 - (a) that the Property has been continuously used as a school in Use Class D1 from 1993 to date (i.e. for over twenty-five years); and
 - (b) that Camden Council was aware of and acknowledged this use.
17. In addition to the statutory declarations of the Applicant and of Mrs Bolsom, the following evidence clearly demonstrates that the Property has been continuously used as school in Use Class D1 since at least 1993:
 - (a) The photographs of the Property taken during the School's 10th Anniversary Fete on 22 June 1996, which clearly show the school sign at the front of the Property and students and teachers in the playground to the rear (**Exhibit A**) (the date of the photographs is confirmed in the statutory declarations of both Ms Carol Gay and Ms Ellen Bolsom and further evidenced by the '0171' telephone number shown on the School sign and the fact that the Bigsby Hall Annex (built in 1998 and referred to in paragraph 17(b) below) clearly was not built at the time the playground photos were taken);
 - (b) The planning permission decision notice given by Camden Council on 7 March 1997 (application P9601825R2) granting planning permission for the construction of the Bigsby Hall annex as a multi-purpose educational space (Use Class D1) and associated documentation showing that the whole of the Property was already being used as a school (**Exhibit B**). For example, condition 3 of the decision notice is that "*At no time shall the number of children enrolled and attending the Village School, 2 Parkhill Road, exceed 130 pupils*". This condition and the consistent reference to the Property as

'*The Village School*' the documents included in Exhibit B clearly demonstrate that Camden Council understood and implicitly or explicitly consented to the use as a school in Use Class D1;

- (c) The documents submitted in support of planning application 2008/3015/P (and included in **Exhibit C**) further demonstrate the use of the Property as a School and Camden Council's awareness of this use (see, in particular, references to the Property's use as a school in the Delegated Report produced for the Council in addition to the references to this use in the documents submitted by the applicant);
- (d) The School is registered with Ofsted (URN 100077) and the Ofsted website <https://reports.ofsted.gov.uk/27/100077> confirms that the school opened in 1985 and its address is the Property (**Exhibit D**). Regular inspections of the School have been carried out by Ofsted since 1993 at the Property (and before, at the School's former premises at Tufnell Park). Information available on the Ofsted website (including the inspection reports from inspections carried out in February 2007, October 2009, October 2012 and February 2017 (**Exhibit E**)) provide third party verification from a government department that has regularly inspected the School that the School has been operating from the Property since at least 2007. The school information and self-evaluation form submitted by the School to Ofsted in 2003 and correspondence from the Department of Education and Skills in the same year (**Exhibit F**) provides further evidence that the School was operating from the Property at that time;
- (e) Annual census data submitted by the School to the Department of Education (formerly the Department of Education and Skills) each year from 2005 until 2018 also records that the School was operating from the Property throughout that period (**Exhibit G**);
- (f) Business rates bills submitted by the Council in relation to the Property were addressed to the School and include the property description 'SCHOOL AND PREMISES' (the bills for financial years 2010/11, 2011/12, 2012/13, 2013/14, 2015/16, 2016/17 and 2017/18 are included at **Exhibit H**);
- (g) Rating valuation of the Property by the Valuation Office Agency in October 2009 clearly shows that the Property is described as "School and Premises" and is allocated the Special Category Code "Public and Independent Schools / 223". It further references various components of the Property, including "Classrooms" and "Play Areas" (**Exhibit I**);
- (h) Certificates of employers' liability insurance issued by Ecclesiastical Insurance Office plc, from 2002/03 onwards, name the policy holder as 'Mrs F Prior and Miss C Gay trading as the Village School' or, from 2008/09, 'Miss C Gay trading as the Village School' going back to 1998 (see **Exhibit J**); and

- (i) A letter from the Engineering Service of Camden Council dated 30 May 2012 including a map which clearly identifies the Property as 'The Village School' (**Exhibit K**).

18. It is clear from this evidence that the Property has been continuously used as a school in Use Class D1 since it was purchased by the Applicant and Mrs Prior in 1993. In addition, the evidence supports the view that Camden Council was fully aware that it was being so used and demonstrated a clear view that the permitted use of the Property was as a school in Use Class D1.

Use of the Property prior to 1993

19. Whilst not strictly relevant since established use from 1993 is more than sufficient to satisfy the test in Section 171B(3) TCPA 1990 (being continuous use for more than ten years), it is understood that the Property had been used by Camden Council within Use Class D1 for a significant period of time prior to 1993.
20. This understanding is based on the personal recollection of the Applicant, as well as the planning history for the Property (see, for example, the planning permission granted by Camden Council to itself on 27 November 1984, where the submitted drawings referred to the Property as 'Park Hill Young Family Centre' (see **Exhibit M**) and the planning application in 1973 for the erection of "donkey stable and store", which refers to the Property as 'Parkhill Rd Day Nursery' (both uses falling within use class D1)).
21. We have provided an extract from the property listing used when the Property was sold to the Applicant and Mrs Prior in 1993 (**Exhibit L**, which refers to the current use being "for a Childrens Day Nursery" (again, falling within use class D1).
22. We also note that a stone located on the south eastern boundary wall of the Property (a photograph of which is included at **Exhibit N**) contains the following inscription:

*TWELVE INCHES WEST
FROM THIS STONE
THE ORPHAN
WORKING SCHOOL
ESTATE
1848*

Summary

23. It is clear from the evidence provided that the use of the Property in Use Class D1 may well have been lawful when the Property was purchased in 1993.
24. The evidence that has been submitted in support of the CLUED Application firmly establishes beyond any reasonable doubt (less still on the balance of probabilities) that the Property has been in continuous use as a School in Use Class D1 in excess of ten years.

25. Accordingly, we invite the Council to grant the CLEUD pursuant to the Application in accordance with Section 191(4) TCPA at the earliest opportunity.

We look forward to hearing from you shortly. In the meantime, if you have any questions, please do not hesitate to contact Adam Hearn or Jonty Steinfeld, whose contact details are set out below:

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Yours faithfully



Steinfeld Law LLP

Encls.