

<b>LDC Report</b> (Existing)	
<b>Officer</b> Jonathan McClue	<b>Application Number</b> 2019/2372/P
<b>Application Address</b> St Bedes Hall Little Albany Street London NW1 4DY	<b>Recommendation</b> Grant Certificate of Lawfulness for Breach of Planning Condition
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
Breach of planning condition 1 (hours of operations restricted between 9.00am and 10.00pm and no more than 100 people at the premises at any one time) of 8700058 dated 04/06/1987 (for: Continued use as a judo club with additional health and keep-fit activities) for a continuous period of at least 10 years, to allow unrestricted opening hours	
<b>Assessment</b>	
<p><b>Site</b></p> <p>The site relates to a building in leisure use (use class D1) and is currently occupied by the Engine Room, who operate with rowing classes. It has been occupied by a number of gymnasium and similar uses over the years.</p> <p><b>History</b></p> <p>Planning permission was granted in 1987 (ref 8700058) for the continued use of the venue to provide a judo club and additional health and keep-fit activities. The approval included a condition limiting the opening hours of the venue between 9am and 10pm.</p> <p>The applicant claims that the venue has been operated by multiple gym operators since that time, all of which have opened well in advance of 9am, 7 days a week.</p> <p><b>Proposal</b></p> <p>The application has been submitted to demonstrate that the site has been in breach of condition 1 of planning ref 8700058, which restricted the opening hours between 9am and 10pm, for a continuous period of at least 10 years. The applicant is seeking to confirm that this is lawful, meaning that the breach would be immune from any future Enforcement Action (i.e. effectively removing the planning condition).</p> <p>The evidence submitted with the application attempts to demonstrate that the current and previous operators have opened generally between 7am and 8am during the breach period (over 10 years). There are in addition to these general opening times many examples of earlier opening times (from 6.30am).</p>	

A local planning authority can grant a certificate of lawfulness for an existing use of land, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990.

Section 191 (3) states that any matter constituting a failure to comply with any condition or limitation subject to which permission has been granted is lawful at any time if a) the time for taking enforcement action in respect of the failure has expired; and b) it does not contravene any enforcement action or breach of condition notice in force. The Planning and Compensation Act 1991 confirms that in this case the relevant time period available to the authority to take Enforcement Action is 10 years, and no current notices exist. The evidence submitted shows that the breach has occurred since March 2009, over 10 years ago – and so both parts a) and b) have been complied with fully.

### **Applicant's Evidence**

The submitted evidence includes 36 separate pieces of evidence demonstrating that the venue opened before 9am on each occasion. These pieces of evidence are evenly distributed across the required 10 years, evidencing the continuous breach of the planning condition.

To provide further assurance, the applicant has provided a further 3 witness statements. The first of these provides a sworn affidavit provided by Steve Potts, Executive Director of BKL for the past 11 years. His statement confirms that these opening times have been maintained throughout the entire period. In addition to this are supporting statements from Christopher Heron – Director and Richard Brook – Instructor. All statements have been witnessed, and confirm opening hours.

The quantity and variety of evidence provided, plus these 3 statements provides a very clear a precise record of the venues opening hours.

### **Council's Evidence**

The application follows a request from the Council's Enforcement team, required to address a potential breach of planning condition. An enforcement case was setup under EN19/0095 to investigate noise and nuisance issues with the use. From site visits and investigations, officers are in no doubt that the breach is occurring and has been for an established period of time.

### **Assessment**

The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the "balance of probability", and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, 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. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

The Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous

to demonstrate that 'on the balance of probability' the breach has continued for a period of more than 10 years as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

**Recommendation: Approve**