

PD12533 TM/GK

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07 August 2019

**Mr David Peres da Costa**  
**London Borough of Camden**  
**5 Pancras Square**  
**London**  
**N1C 4AG**

**Planning portal reference: PP-08045752**

Dear Mr Peres da Costa

**28 REDINGTON ROAD, NW3 7RB - APPLICATION FOR CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT**

Montagu Evans LLP are instructed to provide planning and heritage consultancy services in relation to proposals for the redevelopment of the property at 28 Redington Road, Camden, NW3 7RB. Further to the pre-application advice and related correspondence in which the lawful use of the property was queried, we have submitted this application for a Certificate of Lawfulness of Existing Use or Development (CLUED) of the site pursuant to Section 1919 of the Town and Country Planning Act 1990 (TCPA 1990).

**The Site**

The site is unlisted and located within the Frognal Conservation Area. The site comprises a single substantial house and adjoining coach house (circa 950 sqm). The house is arranged over four floors with a single kitchen, a number of reception rooms, 16 bedrooms and 6 bathrooms.

**Planning History**

On 4 December 1969 Camden Council refused planning permission (ref: 7793) for the Change of Use of 28 Redington Road from a single family residence to use as a Mission Hostel.

On 3 January 2017 an application (ref: 2016/2997/P) was submitted for the erection of 4 storey plus basement building (with accommodation at 4th floor level within the roof) to provide 8 flats (1 x 1 bed, 5 x 2 bed, 1 x 3 bed and 1 x 4 bed) including front balcony and rear roof terraces, hard and soft landscaping and 7 basement car parking spaces with car lift, following demolition of the existing building (Class C3). The applicant (Linton Group) appealed on the basis of non-determination. The appeal was dismissed on 16 November 2017.

**Background**

The property was occupied by the Columban Brotherhood for over 45 years until it was sold in 2015 to the Linton Group. The Linton Group purchased the property with the intention to demolish it and develop the site for flats and submitted an application to the Council on that basis. As referred to above, they appealed the Council's non-determination of the application. The appeal was dismissed and the Linton Group has subsequently sold the property to our client.

Our Client has purchased the property on the basis of refurbishing it and adding modest extensions to bring it back into use as their single family dwelling. The property was purchased on the basis that it was in a lawful C3 use.

The Client and their architects (TBA Architects) approached the Council for pre-application advice in early 2019. The pre-application response raised the question of the lawful use and whether the property benefits from a C3 use. TBA Architects followed up with an email clarifying their understanding that the property has a lawful C3 use. The officer responded with the following:

*"Needless to say, you will need to provide robust evidence of the previous use, as the Council would need to be convinced that the previous use was residential (Class C3).*

*The delegated report for the refused application (2016/2997/P) notes the following:*

*"It is unclear exactly how the Columban Fathers used the property."; and*

*"The use could also be considered 'Sui Generis' or Class C1 which includes hostels."*

*For the previous application (2016/2997/P), the Council had no objection to the conversion of the property to flats and under the Local Development Framework, there were no significant policy requirements that flowed from this.*

*Following the adoption of the Local Plan 2017, the previous use would affect the operation of policies in relation to affordable housing and car free. In this situation, the onus would be on the applicant to robustly demonstrate how the property was previously used. Sworn statements from those with intimate knowledge of how the property was used would be suitable evidence."*

*This application seeks to address the concerns raised by the Council and present the evidence demonstrating the property is within a C3 use."*

This application therefore seeks to demonstrate the lawful use of the building as C3 and for the Council to confirm this use through the provision of a certificate.

### **Legal Framework**

The application is made for a CLUED with regard to the existing lawful use of the site, which we consider falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987, as amended (the UCO)

The Use C3 use class is described in the UCO as:

*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,*

*(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).*

We consider the property falls within Class C3(c) of the Order. As Such, a CLEUD is sought to confirm the lawful use of the site as a falling within use class C3.

We note that in November 2010 a Circular (08/2010) "Changes to Planning Regulations for Dwellinghouses and Houses in Multiple Occupations" was issued by the Department of Communities and Local Government to provide additional clarification regarding the interpretation of the 2010 amendment to the Use Class Order. In relation to C3(c) use class it states:

*"C3(c) allows for groups of people (up to six) living together as a single household. This is to allow for those groupings that do not fall within the C4 house in multiple occupation definition to be provided for e.g. a small religious community may fall into this section as could a homeowner who is living with a lodger."*

For the purposes of the 1990 Act (Section 191(2)) a use and operation is considered 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."*

There are no enforcement notices in force in relation to the site, and therefore the matter of lawfulness rests on whether enforcement action could properly be taken in respect of the use. On that basis the test is whether such a use has been undertaken for a period of not less than ten years (per Section 171B(1) of the 1990 Act).

Section 191(4) of the 1990 Act states that where the local planning authority is satisfied by the information provided that the use is lawful, then they must issue a certificate to that effect:

*"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."*

Planning Practice Guidance regarding lawful development certificates for an existing use confirms that the test to be applied by the local planning authority in determining whether they are satisfied a use is lawful is whether, on the balance of probabilities, the evidence provided by the applicant justifies the grant of the certificate.

*"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."*

Therefore the matter under consideration is whether the evidence provided as part of this application satisfies the Council on the balance of probabilities that the existing use is C3.

The balance of probabilities threshold is lower than a test, for example, of beyond reasonable doubt. Therefore, it is not a case of the evidence assuaging any doubt that exist, but whether, on the evidence presented to the local authority, the applicant's assertion of the use is more probable than any other version present to the local authority. Provided that this is the case, the Council are required to grant the CLEUD.

## **Evidence**

In addition to this letter, the application is supported by the following evidence:

- 1) A Sworn Affidavit provided by Father Peter Hughes of the Columban Brotherhood.
- 2) A legal opinion regarding the existing use provided by Robert Walton QC of Landmark Chambers which makes reference to the following evidence:
  - a. Appendix 1 - 1969 Planning Decision (7793)

- b. Appendix 2 – Sworn Affidavit of Father Peter Hughes (as above)
- c. Appendix 3 – Health and Safety Report
- d. Appendix 4 – Appeal Decisions APP/J4423/C/05/2002582
- e. Appendix 5 – Statement of Common Ground Appeal APP/X5210/W/16/3164577
- f. Appendix 6 – Planning Statement Application 2016/2997/P
- g. Appendix 7 - Council Tax Record
- h. Appendix 8 – 2015 Sales Particulars

A red line plan illustrating the location of the Site is also provided.

The Counsel's Opinion assesses a range of evidence gathered regarding the use of the property and concludes:

*"In my view the evidence demonstrates that on the balance of probability the Property has been used at all material times as a single dwellinghouse. It follows that the certificate application should be approved."*

#### **Closing remarks**

I trust that the above is clear.

Payment of the appropriate fee will be made via the planning portal. We look forward to confirmation that the application has been validated. If you have any queries regarding the application please contact Tim Miles (tim.miles@montagu-evans.co.uk / 020 7312 7444) or Gemma Kendall (Gemma.kendall@montagu-evans.co.uk / 020 7493 8547) in this office in the first instance.

Yours sincerely



**MONTAGU EVANS LLP**