

LDC Report		11/12/2019
Officer		Application Number
Matthew Dempsey		2019/3178/P
Application Address		Recommendation
		Approve Certificate of lawful development/ use
1st Signature		2nd Signature (if refusal)
Proposal		
Breach of planning condition 2 (personal permission) of planning permission 28130 dated 06/06/1979 (for: Continuation of the use of the ground floor as a recording studio) for a continuous period of at least 10 years, to allow non-personal permission		
Assessment		
<p>Site</p> <p>The application site is located on the South-eastern side of Camden Mews. The building is not listed and is located in the Camden Square Conservation Area.</p> <p>History</p> <p>Planning permission was granted on 6th June 1979 (ref 28130) for; "Continuation of the use of the ground floor as a recording studio and extension of this use on the ground floor into the yard and the building of a ground floor extension to accommodate this use."</p> <p>The permission included condition (No. 2) whereby; "This permission shall be personal to Mr. P Rackman during his occupation and shall not endure for the benefit of the land. On his vacating the premises the use shall revert to the lawful use for light industrial purposes".</p> <p>Furthermore the informative on the decision notice states "The upper floor has residential use rights and any expansion of the ground floor use of recording studio to the upper floor would constitute development and would therefore require planning permission".</p> <p>Proposal</p> <p>This application seeks to demonstrate that condition 2 of 28130 approval has been breached for a continued period of more than 10 years prior to the application being submitted for a certificate of lawful development/ use. 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 applicant has submitted an application form and cover letter alongside the following</p>		

documents:

- O/S plan identifying the property.
- Existing ground and first floor plans of the property.
- Decision Notice, application ref: CTP/G13/8/8/28130, dated 06/06/1979.
- Statutory declaration statement by Mr. Robert Swire-Thompson, dated 18th June 2019.
- Exhibit A to statutory declaration of Mr. Robert Swire-Thompson.
- Statutory declaration statement by Mr James John Napier, dated 15th May 2019.
- Appeal decisions APP/B1930/X/14/2214297; APP/N5660/X/12/2178832;
- APP/Q5300/X/14/2227207; APP/U1105/X/15/3011447; APP/F5540/X/13/2207829 and APP/M0655/X/13/2198072.

The application was submitted 20/06/2019, and the statutory declaration of Mr. Robert Swire-Thompson provided confirms that the use had been in place from 07/04/2009, i.e.) more than 10 year prior to the application being submitted to the local planning authority. Following acquiring the property Mr Robert Swire-Thompson continued to use the recording studio on the ground floor as well as the residential flat above.

A further statutory declaration of Mr. James John Napier confirms the purchase of the property in December 2018, and the continued use alongside confirmation that business rates have been paid.

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 April 2009, over 10 years ago – and so both parts a) and b) have been complied with fully.

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. There is no planning enforcement history in opposition to the breach of condition 2.. Business Rates and Council Tax Officers have been able to confirm payments have been made for the property for a period of more than 10 years prior to the application being submitted to the local planning authority.

A site visit by Officers on 03/09/2019 showed that the property was laid out as shown in the plans provided.

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

The Council considers that the evidence listed above appropriately demonstrates that the breach of condition 2 of planning application reference 28130 dated 06/06/1979, began more than ten years before the date of this application and has been operating as such continuously over this period.

Recommendation: Grant certificate