

# Flats 1,2 & 3, 68 Charlotte Street (2018/1254/P)



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<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	<b>09/05/2018</b>
<b>(Members Briefing)</b>		n/a	<b>Consultation Expiry Date:</b>	n/a
<b>Officer</b>			<b>Application Number(s)</b>	
Tony Young			2018/1254/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
Flats 1, 2 and 3 68 Charlotte Street LONDON W1T 4QF			Refer to draft decision notice	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>				
Use as an apart-hotel (Class C1) at 1st, 2nd and 3rd floor levels.				
<b>Recommendation(s):</b>		Grant certificate of lawfulness (existing)		
<b>Application Type(s):</b>		Certificate of Lawfulness (Existing)		

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
<b>Consultations</b>						
Adjoining Occupiers:	No. notified	0	No. of responses	01	No. of objections	01
			No. Electronic	01		
Summary of consultation responses from local residents	n/a					
CAAC/Local groups comments	<p>Given the nature of certificate of lawfulness applications, and in particular that purely matters of legal fact are involved its' determination, the Council does not engage in a formal consultation process. Nevertheless, a response has been received from the <u>Fitzrovia Neighbourhood Association</u> objecting to the proposals as follows:</p> <ol style="list-style-type: none"> <li>1. <i>"Our association strongly objects to a change of use from permanent self-contained accommodation to use as an apart-hotel because it would mean a loss of residential accommodation and against policy as stated in Camden's Local Plan, the London Plan, and the National Planning Policy Framework;"</i></li> <li>2. <i>"The three flats are currently listed for council tax on the VOA register at Council Tax Band D. There is no record of the flats listed with a business rates valuation. Furthermore, a check of the current electoral register reveals that two people are registered to vote at the first floor flat;"</i></li> <li>3. <i>"The applicant relies on statements by people making assertions about the use of the apartments, yet provides no hard documentary evidence from reputable sources to support their application."</i></li> </ol> <p><u>Officer response:</u></p> <ol style="list-style-type: none"> <li>1. The planning merits of the use are not relevant in determining this type of application; purely legal issues are involved;</li> <li>2. This information will be assessed alongside all available evidence;</li> <li>3. The Council has no reason to question the reliability of the statements provided. These have been considered alongside all other supporting evidence providing by the applicant, as well as, any available Council evidence in accordance with the Act.</li> </ol>					

### Site Description

The site is a 4-storey (with basement) mid-terrace property located on the eastern side of Charlotte Street, close to the junction with Tottenham Street to the south. The building is currently in commercial use at ground and basement levels. This application relates to accommodation on the upper floors at 1st, 2nd and 3rd floors (also known as Flats 1, 2 and 3 respectively) and accessed by stairs rising up from the ground floor front entrance lobby.

The building is not listed and sits within the Central London Area and the Charlotte Street Conservation Area.

This application seeks to demonstrate that on the balance of probability the use as an apart-hotel (Class C1) at 1st, 2nd and 3rd floor levels began more than ten years before the date of this application such that its retention would not require planning permission.

## Assessment

### 1. Applicant's Evidence

1.1 The applicant has submitted the following information in support of the application:

- Supporting statement and cover letter from Sanderson Weatherall (agent) dated 09/03/2018 (ref. 171380/68/OP) providing background information in support of the assertion that Flats 1, 2 and 3 (located on the 1st, 2nd and 3rd floor levels respectively) have been in use as an apart-hotel (Class C1) since 2005 and have remained in continuous use as such until the present time;
- Title Register (Appendix 1) dated 14/11/2017 (title number: NGL974508) establishing in whom ownership of the property is vested;
- Title Plan (Appendix 2) identifying the property (title number: NGL974508);
- Lease (Appendix 3) between Salash Holdings Ltd. And Parimal Thaker dated 22/11/2011;
- Statutory declarations (Appendices 4 and 5) from Parimal Thaker and Jagruti Thaker respectively (landlords) dated 28/02/2018 (received on 28/02/2019) declaring that Flats 1, 2 and 3 (located on the 1st, 2nd and 3rd floor levels respectively) have been in use as an apart-hotel since 2005 and have remained in continuous use as such until the present time;
- Statutory declaration (Appendix 6) from Saumitra Chaudhuri (owner/occupier of no.91 Charlotte Street) [undated] declaring that Flats 1, 2 and 3 have been used continuously as an apart-hotel for at least 10 years;
- Statutory declaration (Appendix 7) from Roger Lass (former director of previous landlords, Stokebrook Investments and Salash Holdings Ltd) dated 13/03/2018 outlining sub-letting arrangements and declaring that Flats 1, 2 and 3 were used as an apart-hotel from 2005 to 2017;
- Statement (Appendix 8) from Guillermo Santamaria Martinez (former Director of Air Management Europe Ltd) dated 14/09/2016 confirming authorisation of letting arrangements during an unconfirmed period;
- Statutory declaration (Appendix 9) from Arco Galan (Manager of Air Management Europe Ltd) dated 15/03/2018 confirming sub-letting arrangements of Flats 1, 2 and 3 as an apart-hotel continuously from 2016 to the present day;
- Hyperlinks and extracts (Appendices 10 to 14) from various websites (including Booking.com, Tripadvisor.co.uk, Letsbookhotel.com, Getaroom, Booktravelnstay.com) in support of the asserted use as an apart-hotel on various dates since 2010;
- India Scholarship Programme brochure (Appendix 15) dated February 2012 indicating the involvement of Flexistay in this programme;
- Downing Street Invitation (Appendix 16) to Rishi Bansal (Manager with Flexistay Ltd) dated June 2013;
- Flexistay Brochure (Appendix 17) [undated] advertising accommodation within Central London (pages 22-24);
- Guest Book (Appendix 18) [undated] providing information for guests staying at the 68 Charlotte Street;
- Invoices (Appendix 19) from LAS Dry Cleaners dated 15/01/2010 and 31/01/2010 respectively for cleaning services provided at Flexistay Central;
- Statutory declaration from George Georgiou (owner/occupier of George Shoe Repairs, 35 Tottenham Street) dated 20/02/2019 declaring that Flats 1, 2 and 3 have been used continuously as an apart-hotel for at least 10 years;

- Statutory declaration from Anne Macgregor (owner/occupier of Flat 5, 55 Charlotte Street) dated 15/02/2019 declaring that Flats 1, 2 and 3 have been used continuously as an apart-hotel for at least 10 years;
- Statutory declaration from Rebeca Navarro (owner/occupier of Navarro's Restaurant, 67 Charlotte Street) dated 20/02/2019 declaring that Flats 1, 2 and 3 have been used continuously as an apart-hotel for at least 10 years;
- Email from Flexistay Ltd to Erdem Ozdemr confirming booking arrangements for a 3<sup>rd</sup> floor single room between 09/08/2010 and 12/08/2010;
- Email from Phillippa Bantin to Flexistay Ltd cancelling a room booking between 18/09/2010 and 02/10/2010;
- Email from Flexistay Ltd to Patrick Smith confirming booking arrangements for a single room between 21/09/2010 and 23/09/2010.

1.2 The applicant has also submitted the following plans:

- Unnumbered site location plan (Appendix 2) identifying the application site;
- Existing 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> floor plans (refs. 57536-1, 3, 4 and 7) showing each floor.

## 2. Council's Evidence

2.1 The most relevant historic planning records are summarised below:

- 2018/4298/P - Change of use of basement and ground floors from office (Class B1a) to dental clinic (Class D1). Planning application currently under consideration.
- EN17/0260 – Use as short term let. Case currently under investigation.
- EN16/0557 – Basement used a workshop. No breach found. Enforcement case closed 10/03/2017
- 2012/5254/P - Erection of rear ground floor extension, creation of front lightwell enclosed by railings and with stairs to street together with the installation of a door and two windows to the basement level front elevation and change of use of part basement and part ground floor from offices (Class B1) to 1 x 2 bedroom self contained flat (Class C3). Planning permission was refused dated 30/11/2012.
- EN11/0813 - Use of flat for short term lets. No breach found. Enforcement case closed 28/07/2015 – A Planning Contravention Notice was served on all three flats in 2015 which showed at that time a breach of the Deregulation Act had not taken place.

It now appears based on the information presented that the building was in fact being used as an apart-hotel at 1st, 2nd and 3rd floor levels, rather than 3 x residential units in occasional short term let use, and therefore this case was closed in error.

- N12/25/G/17897 - The redevelopment of the sites of 64-68 Charlotte Street and 32 Tottenham Street, W1 by the erection of a seven storey building over basement, comprising shops, showrooms, workrooms, warehouse, offices, residential and car parking. Planning permission was refused dated 01/03/1974.
- N12/25/G/15446 - Redevelopment of the site of 64/68 Charlotte Street and 32 Tottenham Street, W1 by the erection of a 7 storey building plus basement for use as shops or workroom on the ground floor, showroom or workroom on first floor, offices and residential on second, third, fourth floors, and residential on fifth and sixth floors with basement parking. Planning

permission was refused dated 29/03/1973.

- N12/25/G/11751 - Redevelopment of the sites of Nos. 64-68 Charlotte Street and 32 Tottenham Street W.1. by the erection of a 7 storey building for use as shops or showrooms on the ground and first floors, offices on second to fifth floors and two residential flats on the sixth floor together with 5 residential flats next Tottenham Street. Planning permission was refused dated 01/12/1971.
- N12/25/G/7075 - The redevelopment of the sites of Nos. 64-68, Charlotte Street, and 32, Tottenham Street, Camden, by the erection of a seven- storey building over basement, comprising shops, show rooms, work rooms, warehouse, offices, residential and car parking. Planning permission was granted dated 17/07/1969.

## 2.2 Other evidence:

- Valuation Office Agency (VOA) records show council tax banding details for residential use at Flat 1 (effective 01/04/1993), Flat 2 (effective 01/08/1997) and Flat 3 (effective 01/08/1997). There are no business rates entries for 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> floors listed on the VOA database in relation to the property.
- The Council's Private Sector Housing team have confirmed they have had no prior involvement at the property.
- Photographs (photos 1 and 2) from Council records in January and September 2010 showing Flexistay advertising at the front of the premises:

Photo 1



Photo 2



## 2.3 Site visit:

- A site visit to the property was undertaken by the case officer on 18/09/2018. The officer was satisfied that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors were operating in a use consistent with that of an apartment (Class C1) and noted evidence of this use having operated in this way for some time.

## 3. Comments from Local Group

3.1 Given the nature of certificate of lawfulness applications, the planning merits of the use are not relevant in determining an application; purely matters of legal fact are involved.

3.2 The response from the Fitzrovia Neighbourhood Association has been assessed, and while the objections and points raised have been duly noted, it is considered that no additional evidence has been provided to contradict or undermine the applicant's version of events.

#### **4. Assessment**

4.1 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 (Planning Practise Guidance para. 006), 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.

4.2 Although an enforcement investigation (EN11/0813) concluded in 2015 that no planning breach had taken place with regard to the alleged use of residential accommodation on 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors for short term letting, it also recognised that the property had been used in such a way pre-2003 and since 2012. Furthermore, Council records also now reveal photographs (photos 1 and 2 above) dated back to 2010 which show the property with Flexistay advertising clearly displayed outside in support of the applicant's assertion. While there is no factual evidence provided by the applicant for 2009, the Council has no reason to question the assertions made within the submitted statutory declarations with regard to the use of the relevant floors of the property during this time, especially in the absence of any contrary evidence.

4.3 As such, it is considered that the information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the use of Flats 1, 2 and 3 as an apart-hotel (Class C1) is likely to have begun more than 10 years before the date of this application, such that its retention would not require planning permission as required under the Act. Furthermore, and on balance, the Council's evidence does not contradict or undermine the applicant's version of events.

#### **5. Recommendation**

5.1 Approve certificate of lawfulness.

#### **DISCLAIMER**

**The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 25th March 2019, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to [www.camden.gov.uk](http://www.camden.gov.uk) and search for 'Members Briefing'.**

Sanderson Weatherall LLP  
30 Queen Square  
Bristol  
BS14ND

Application Ref: **2018/1254/P**  
Please ask for: **Tony Young**  
Telephone: 020 7974 **2687**

18 March 2019

**DRAFT**

Dear Sir/Madam

## DECISION

Town and Country Planning Act 1990

### Certificate of Lawfulness (Existing) Granted

The Council hereby certifies that on the 13 April 2018 the use described in the First Schedule below in respect of the land specified in the Second Schedule below, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 as amended.

First Schedule:

Use as an apart-hotel (Class C1) at 1st, 2nd and 3rd floor levels.

Drawing Nos: Unnumbered site location plan; Floor plans numbered 57536-1, 3, 4 and 7; Supporting statement and cover letter from Sanderson Weatherall dated 09/03/2018 (ref. 171380/68/OP); Title Register (Appendix 1) dated 14/11/2017; Lease (appendix 3) between Salash Holdings Ltd and Parimal Thaker dated 22/11/2011; various statutory declarations (appendices 4 to 9); Hyperlinks and extracts from various websites (appendices 10 to 14); India Scholarship Programme brochure (appendix 15) dated February 2012; Downing Street Invitation (appendix 16) to Flexistay Ltd dated June 2013; Flexistay Brochure (appendix 17) [undated]; Guest Book (appendix 18) [undated]; Invoices (appendix 19) from LAS Dry Cleaners dated 15/01/2010 and 31/01/2010 respectively; Statutory declarations from George Georgiou, Anne Macgregor and Rebeca Navarro; Emails from Flexistay Ltd and Phillippa Bantin (various dates in 2010).

Second Schedule:

**Flats 1, 2 and 3**  
**68 Charlotte Street**

Executive Director Supporting Communities





**LONDON  
W1T 4QF**

Reason for the Decision:

- 1 The use as described in the First Schedule began more than ten years before the date of this application.

Informative(s):

- 1 You are reminded that this certificate solely relates to the change of use as described in the First Schedule above and does not grant planning permission or consent for any other external alterations either described or shown on the approved drawings/documents attached to this Certificate.
- 2 The granting of this certificate is without prejudice to, and shall not be construed as derogating from, any of the rights, powers, and duties of the Council pursuant to any of its statutory functions or in any other capacity and, in particular, shall not restrict the Council from exercising any of its powers or duties under the Town and Country Planning Act 1990 as amended. Planning advice may be sought from the Council's Development Management Team, Town Hall, Argyle Street WC1H 8EQ, (tel: 020 7974 4444) or by email at [planning@camden.gov.uk](mailto:planning@camden.gov.uk).

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2019.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

Director of Regeneration and Planning

Notes

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful on the specified date and thus, would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operations/matter which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

**DRAFT**

**DECISION**