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Via Planning Portal Only

14th September 2020

Dear Sir/Madam,

CERTIFICATE OF LAWFULNESS OF EXISTING DEVELOPMENT (CLEUD)

FOR THE ERECTION OF A FOURTH FLOOR EXTENSION TO CREATE TWO ADDITIONAL UNITS OF ACCOMMODATION ASSOCIATED WITH THE ESTABLISHED USE OF THE EXISTING BUILDING

THE CAMDEN STAY CLUB, 34 CHALK FARM ROAD, LONDON, NW1 8AJ

Please accept this covering letter as an accompaniment to this lawful development certificate application to confirm that the erection of a fourth floor extension to create two additional units of accommodation associated with the established use at The Camden Stay Club is lawful. The application is submitted under Section 191 of the Town and Country Planning Act 1990 (as amended).

The Site

The application site is located on the north side of Chalk Farm Road close to its junction with Harmood Street and comprises a four-storey building in commercial use at ground floor and student accommodation above.

The existing building is bounded by Chalk Farm Road to the south, a busy arterial route between Camden Town and North London. The entrance to the building is bounded by the Lock Tavern public house to the west and by a restaurant to the east. To the south, on the opposite side of Chalk Farm Road, are the Stables and Camden Lock Markets.

Overall, the surrounding area is mixed in character, appearance, materiality and activity ranging from the residential streets of Harmood Street and Hartland Road to the commercial and lively Chalk Farm Road. There is no prevailing architectural style with each street offering its own distinct townscape.

Relevant Planning History

On 9 October 2012, full planning permission was granted, under application reference 2012/0974/P, for:

The redevelopment of existing petrol filling station site with a basement plus 4-storey mixed-use building, comprising 6 x retail units (Class A1/A3) at basement and ground floor level and 40 student residential units (Sui Generis) at mezzanine, first, second and third floor level with cycle storage in the basement.

The planning permission was implemented, completed and occupied by March 2014.

On 23 September 2008 full planning permission was granted, under application reference 2008/2981/P, for:

The erection of a part 2, part 4-storey building with two basement levels to provide student accommodation comprising 192 self-contained study rooms and ancillary facilities (sui generis) (following demolition of existing buildings).

The planning permission was implemented, completed and occupied by June 2013.

Subsequently, an application was submitted in July 2013, under application reference 2013/4467/P, for a rear extension at 4th floor level to provide two additional student units. A resolution to grant the application was reached but a decision never issued. The proposal was nevertheless built out as per the plans submitted with this application. The development was completed and occupied by March 2014.

Legislative Background and Guidance

Section 191 of the Town and Country Planning Act 1990 (as amended)

Section 191 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") allows applications to a Local Planning Authority for the issue of Certificates of Lawful Use or Existing Development (CLEUD). This provides a statutory mechanism for obtaining confirmation that an existing use of land, some operational development, or some activity in breach of a planning condition, is lawful and consequently immune from enforcement action.

Planning Practice Guidance Paragraph 002

Planning Practice Guidance on lawful development certificates, published by the Ministry of Housing, Communities & Local Government, sets out that, for existing development, the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

Section 171B(1) of the Town and Country Planning Act 1990 (as amended)

Section 171B(1) of the Town and Country Planning Act provides for the 'four year rule' in respect of operational development. It states:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

Therefore, if it can be demonstrated that the extension was substantially completed more than 4 years prior to the submission of this certificate application, then the development is lawful and a certificate should be issued.

PINS Procedural Guide: Enforcement Notice Appeals

While relating to enforcement notice appeals, the guidance usefully sets out the context for proving the relevant four-year period. It states:

"The onus of proof is on an appellant. The test to be achieved is 'on the balance of probability' (a lesser requirement than 'beyond a reasonable doubt')."

Planning Practice Guidance Paragraph 009

Planning Practice Guidance at paragraph 009, states:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process."

In light of the above, it is clear that a 'CLEUD' is not a planning permission. The planning merits of the use, operation or activity in the application are not therefore relevant and planning policies are thus not applicable. The issue of a certificate depends entirely on factual evidence

about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The test in this instance is whether 'on the balance of probability' the applicant has demonstrated that the development was constructed more than four years prior to the submission of this certificate application.

The lawfulness of the existing development

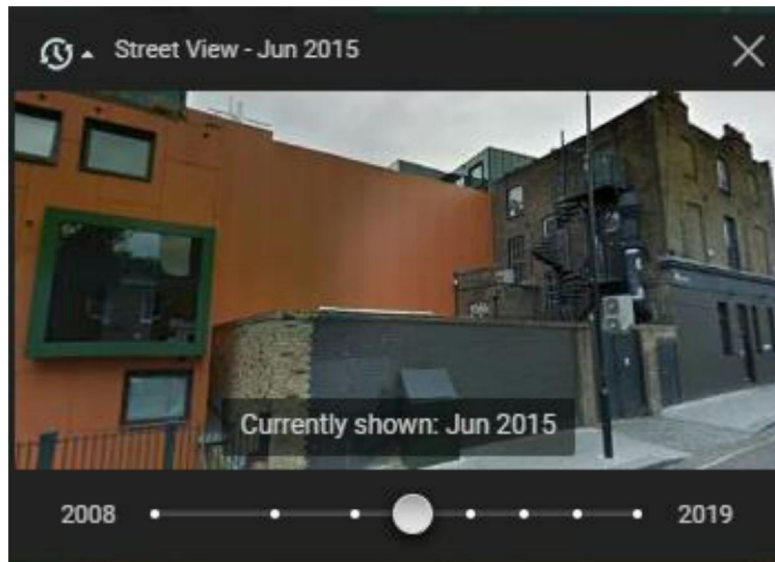
As outlined above the application is not to be considered against local or national planning policy. The question to ask is whether the applicant has demonstrated, on the balance of probability, that the development occurred more than four years prior to the submission of this certificate application.

The 'balance of probability' threshold was previously set out in Circular 10/97 (now cancelled) but that threshold is repeated in current Planning Practice Guidance. Further, case law dictates that an applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted (*FW Gabbitts v SSE and Newham LBC* [1985] JPL 630). If the local planning authority has no evidence of its own, or 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."

In this case, it can clearly be demonstrated, on the balance of probability, that the development occurred well in excess of four years prior to the submission of this application.

Firstly, and most evidently, Google Earth images dating from at least June 2015 highlight the structure in situ as per the images below.





Secondly, the as built floor plan identifies the two rooms as 259 and 260. Included as evidence to the application are tenancy records for those rooms dating from 2014.

Summary & Conclusion

The evidence submitted clearly demonstrates that the built development, in accordance with the established use of the building, occurred more than four years previous to the submission of this certificate application.

Accordingly, the requirements of s.191(2)(a) are satisfied (lawfulness through expiry of time), and any refusal from the Council would be unfounded. It is therefore respectfully requested that a certificate is issued.

I trust the commentary above is clear but please do not hesitate to contact me if you have any queries or if I can offer any further points of clarification.

Yours sincerely

Allen Sacbucker
Associate
SM Planning