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80-83 Long Lane  
London, EC1A 9ET

**Via Planning Portal Only**

19<sup>th</sup> May 2021

Dear Sir/Madam

**CERTIFICATE OF LAWFUL DEVELOPMENT (EXISTING) WITH RESPECT TO THE LAWFUL EXISTING C3  
USE FLATS A-I AT NO. 5 ADAMSON ROAD AND FLATS 1 – 10 AT NO.7 ADAMSON ROAD, NW3 3HX.**

This is an application under Section 191 (1) (b) of the Town and Country Planning Act 1990 to obtain a Lawful Development Certificate to confirm that the lawful existing C3 use of flats A-I at no. 5 Adamson Road and Flats 1 – 10 at no. 7 Adamson Road. The existing flats are lawful by virtue of the residential use having taken place for a period in excess of 4 years, prior to the date this application was made.

The following documents are submitted in support of the application:

- Completed application form;
- Site location plan;
- Site block plan;
- Plans, elevations and sections (as existing);
- Energy performance certificates for each of the flats;
- Maintenance work invoices for each of the flats;
- Council tax records for each property;
- Valuation Officer records of the Council tax banding for each residential unit;
- Google Street view images of the property showing multiple occupancy paraphernalia;

- Sworn Affidavit from the property's owner regarding the continuous lawful use of the flats.

Supporting Evidence:

- Appendix 1 – Invoices for property surveying and associated correspondence (dated 9<sup>th</sup> of September 1974 and 1<sup>st</sup> of August 1967), valuation report (30<sup>th</sup> of January 1984) and Council tax bills (dated 14<sup>th</sup> of August 1999, 14<sup>th</sup> of March 2011, 16<sup>th</sup> of March 2001, 27<sup>th</sup> of April 2001, 14<sup>th</sup> of November 2003, 11<sup>th</sup> of June 2004, 17<sup>th</sup> of December 2004, 25<sup>th</sup> of April 2006, 20<sup>th</sup> of August 2016 and 24<sup>th</sup> of September 2016).
- Appendix 2 – Receipts/ invoices for maintenance works to the flats (dated 13<sup>th</sup> of May 2015, 28<sup>th</sup> of June 2015, 30<sup>th</sup> of June 2015, 22<sup>nd</sup> of July 2015, 10<sup>th</sup> of August 2016, 28<sup>th</sup> of August 2015, 25<sup>th</sup> of September 2015, 19<sup>th</sup> of October 2015, 6<sup>th</sup> of March 2016, 29<sup>th</sup> of March 2016, 9<sup>th</sup> of October 2016 and 7<sup>th</sup> of November 2016).
- Appendix 3 – Energy performance certificates (dated 27<sup>th</sup> September 2017).
- Appendix 4 – Sworn affidavit dated 12<sup>th</sup> of May 2021.
- Appendix 5 – Valuation Office records of Council tax banding.
- Appendix 6 – Google Street view images showing flat paraphernalia.

**The Site**

The site is located on the north side of Adamson Road, to the east of the junction with Winchester Road. The site comprises of a pair of 4 storey (with basement), semi-detached, properties which have been subdivided into a total of 19 flats. No.5 currently comprises 9 flats (A-I) across 5 floors and no.7 comprises of 10 flats (1-10) across 5 floors.

The site is on a street comprised of similar residential properties. The site lies within the Belsize Park Conservation Area.

**Planning History**

On the 7<sup>th</sup> of September 1967, planning permission (reference H7/3/B/4066) was granted for alterations to provide 8 self-contained flats at no. 7 Adamson Road.

On the 21<sup>st</sup> of April 1972, planning permission (reference H7/3/15/13055) was granted for the conversion of basement at no. 5 Adamson Road to provide 2 self-contained flats.

On the 31<sup>st</sup> of January 1975, planning permission was refused for 3 applications (references H7/3/B/19775, H7/3/B/18926R and H7/3/B/19625R) for the change of use of the first, second and third floor to provide 2 self-contained flats on each floor at both no.5 and no.7 Adamson Road. The applications were refused on the grounds of inadequate room sizes and exceeding the density standards.

On the 10<sup>th</sup> of April 1975, permission (reference H7/3/B/20303) was granted for the change of use of the first floor to provide 2 self-contained flats at no.5 Adamson Road.

### **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. This provides a statutory mechanism for obtaining confirmation that an existing use of land, operational development, or activity in breach of a planning condition, is lawful and consequently immune from enforcement action.

#### ***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:

*(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*

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

#### ***Planning Practice Guidance Paragraph 009***

Planning Practice Guidance at paragraph 009 (Reference ID: 17c-009-20140306), 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, a certificate of lawful use or existing development 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 carried out and substantially completed 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 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."

The works to convert no.5 Adamson Road into 9 flats and no.7 Adamson Road into 10 flats commenced shortly after London & District Investments Ltd purchased no.7 Adamson Road (March 1967). The works to no. 5 were completed in 1974 and the works to no. 7 were completed in 1968. Since completion of the conversion works, the flats have been continuously occupied by tenants other than short breaks between tenants vacating and new tenants occupying the properties. Based on the evidence available it can be demonstrated, on the balance of probability, that the development occurred in excess of four years prior to the submission of this application. The following provides a summary of the evidence submitted in support of the application.

Receipts, invoices and correspondences have been submitted with the application for survey work, property valuation and Council tax dating back to September 1974 (**Appendix 1**). Receipts and invoices have been submitted for maintenance works to the flats dated between 13<sup>th</sup> of May 2015 and 7<sup>th</sup> of November 2016 (**Appendix 2**). Energy performance certificates have been submitted for the properties dated 27<sup>th</sup> of September 2017 (**Appendix 3**). An affidavit has also been submitted with the application from the CEO of London & District Investments Ltd, who own the properties, confirming their ownership of no.5 Adamson Road and no.7 Adamson Road since 1963 and 1967, respectively, completion of the flat conversion works in 1974 and 1968, respectively, and the continuous residential use of the properties thereafter (**Appendix 4**). Valuation Office records have been submitted showing the Council tax banding for each of the residential flats (**Appendix 5**). Google Street view images have been submitted, dated between 2008 and 2019, which show flat paraphernalia to the front of the property including multiple bins and intercom doorbell system for each flat (**Appendix 6**).

### **Summary & Conclusion**

The evidence submitted demonstrates that flats A-I no.5 Adamson Road and flats 1-10 no.7 Adamson Road have existed in residential use for more than four years before the submission of this lawful development 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 faithfully

A black rectangular box redacting the signature of Stuart Minty.

**Stuart Minty**  
**Director**  
**SM Planning**