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Dear Sir/Madam

1-5 Kings Cross Bridge, 281 Pentonville Road and 368 Grays Inn Road, N1 9NW

Application under s.191 of the Town & Country Planning Act (as amended) for a Certificate of Lawfulness of Existing Use or Development

On behalf of the applicant, UK Real Estate Ltd, please find enclosed an application submitted in accordance with s.191 of the Town & Country Planning Act (as amended) for a Certificate of Lawful Existing Use or Development (LDC) in respect of the unit at ground floor level of 1-5 Kings Cross Bridge, 281 Pentonville Road and 368 Grays Inn Road, N1 9NW.

Specifically, this application reflects the recent institution of the use of this unit for retail (shop) purposes. This use is in accordance with the approved use of this unit, as set out within the lawful planning permission for the premises, for either shop or restaurant/café use.

At the time that permission was granted for the overall redevelopment of this site, the retail use now instituted fell within Class A1 of the Use Classes Order (as amended).

Following the modification of the Uses Classes Order in accordance with the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (Statutory Instrument 2020 no. 757) that took effect on 1 September 2020, a shop use now falls within Class E (Commercial, Business and Service) set out in Schedule 2 of the Use Classes Order.

This application therefore seeks a Certificate of Lawful Existing Use from the Council to certify that:

- *Following the institution of a shop use in the ground floor level of the completed development at 1-5 Kings Cross Bridge, 281 Pentonville Road and 368 Grays Inn Road, N1 9NW, the existing lawful use of the relevant floorspace falls within Class E (Commercial, Business and Service) set out in Schedule 2 of the Use Classes Order (as amended); and*
- *In accordance with Section 55 of the Town and Country Planning Act (as amended), any change of use to another use within Use Class E does not constitute development and can be carried out lawfully without requiring planning permission.*

Evidence of the institution of the retail use of the unit is submitted and discussed in greater detail below. An overview of the relevant planning history for the site is also set out below.

In support of this application, please find enclosed the following:

- Completed application forms;
- Site location plan;
- Approved plan of the ground floor unit; and
- Evidence of the recent retail shop use of the unit, comprising of:
 - o Statutory Declaration from a representative of the unit's landlord, UK Real Estate Limited (the Applicant);
 - o The Lease agreed between the landlord, UK Real Estate Limited (the Applicant) and the tenant of the unit, Rested UK Limited, to allow use as a retail shop; and
 - o Photographs of the shop in use.

The application fee of £462 (plus £28 administrative fee) will be paid separately via the Planning Portal.

Relevant Planning History

Planning permission was granted on 26 August 2014 (Ref: 2014/0371/P) for:

Erection of three storey building comprising retail/restaurant (Class A1/A3) at ground floor and office (Class B1a) at first and second floors and roof top plant, following demolition of existing building

This approval was subject to minor amendments which were approved on 15 August 2017 (Ref: 2017/1206/P). Development was commenced and the permission was lawfully implemented on 22 August 2017 with construction continuing to physical completion of the building in 2020.

Between completion in 2020 and the institution of the retail use in mid-2021, the completed building remained empty.

Context for the Institution of the Approved Use

The development approved under planning permission ref: 2014/0371/P, as amended by subsequent permission ref: 2017/1206/P was formally implemented through the commencement of demolition of the previous building on the site and then the ongoing physical construction of the approved development to its completion in 2020. This reflects the definition of a 'material operation' of development set out at Section 55 of the Town and Country Planning Act 1990 (as amended). It is not in question that the approved development as a whole (including the approved uses) was lawfully implemented in 2017.

In accordance with the description of the approved development, uses allowed on the ground floor are either Class A1 retail shop or Class A3 restaurant. The specific use classes referenced reflect the classifications set out within the Use Classes Order at the time that permission was granted in 2014 (and also when the amendment was approved in 2017).

The Use Classes Order was amended in 2020 by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (Statutory Instrument 2020 no. 757). This change in use classes classification was made post the grant of planning permission on this site but prior to the institution of the actual use of the ground floor unit.

Section 7 of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (Statutory Instrument 2020 no. 757) sets out that:

For the purposes of the Use Classes Order, if a building or other land is situated in England, and is being used for the purpose of one of the following classes which were specified in Part A or B of the Schedule to that Order on 31st August 2020, as—

- (a) Class A1 (Shops),*
- (b) Class A2 (Financial and professional services),*
- (c) Class A3 (Restaurants and cafes), or*
- (d) Class B1 (Business),*

that building or other land is to be treated, on or after 1st September 2020, as if it is being used for a purpose specified within Class E (Commercial, business and service) in Schedule 2 to that Order.

Within the amended Use Classes Order, Schedule 2 defines Class E as follows:

Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes—

- (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,*
- (b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,*
- (c) for the provision of the following kinds of services principally to visiting members of the public—*
 - (i) financial services,*
 - (ii) professional services (other than health or medical services), or*
 - (iii) any other services which it is appropriate to provide in a commercial, business or service locality,*
- (d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,*
- (e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,*
- (f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,*
- (g) for—*
 - (i) an office to carry out any operational or administrative functions,*
 - (ii) the research and development of products or processes, or*
 - (iii) any industrial process,*

being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Given that the unit was not in use on 31 August 2020, it is acknowledged that the terms of Section 7 of the Statutory Instrument noted above were not met in full. As such, the lawful use of the ground floor did not automatically switch to the revised Class E on 1 September 2020.

Therefore, it is necessary to institute actual use of the unit to reflect one of the specific uses noted in the planning permission, namely as either a shop or a restaurant.

However once that use is instituted then, in accordance with the content of the Use Classes Order (as amended) today, the use of the unit does then fall under Class E as described above.

In accordance with Section 55(2) of the Town and Country Planning Act 1990 (as amended), moving between uses that fall within the same use class does not constitute development and as such does not require planning permission.

Therefore, once a shop or restaurant use has been instituted in the ground floor unit then this confirms the lawful use of the unit. In accordance with the terms of the Use Classes Order (as amended) as of today, both of these uses fall within Class E and as such it will subsequently be possible to carry out any other use that also falls within Class E without requiring planning permission.

Institution of the Approved Use

The Applicant, UK Real Estate Limited, agreed a lease for the unit with a company called Rested UK Limited. This lease was dated 12 July 2021.

Rested UK Limited are an established retailer specialising in the sale of luxury beds and related products including mattresses, bed frames, pillows and pyjamas. Though predominantly based around online sales, they occupied the ground floor unit to provide a 'bricks and mortar' addition to their retail offer.

The unit was fitted out by Rested with a wide range of their products on display. Staff were available in-store to serve customers. All items from Rested's range were available for purchase and customers were able to walk out with smaller items following their purchase.

There was no limit on access to the shop during its trading, any individual passing was able to enter the shop to meet staff and make purchases as required.

The Rested shop opened to customers on 2 August 2021, operating trading hours of 10am to 5pm on Mondays to Fridays. The shop operated permanently on those terms until trading ceased on 4 October 2021.

Throughout the period of trading, signage clearly displayed the shop's presence, operation, range of merchandise for sale and opening times.

Evidence of the Shop Use within the Unit

Statutory Declaration

A Statutory Declaration has been made by Mr Jeremy Landau of UK Real Estate Limited. As landlord of the property (and Applicant for this submission), UK Real Estate Limited oversaw the lease of the unit to Rested UK Limited with Mr Landau acting as the landlord's representative in the tenancy matters.

Mr Landau's Statutory Declaration confirms the following:

- *A lease for use of the unit was entered into between UK Real Estate Limited and Rested UK Limited on 12 July 2021;*
- *The terms of the lease were such that Rested UK Limited could only use the unit as a retail shop (specifically noted at paragraph 4.8 of the lease);*
- *Rested UK Limited occupied the unit continuously between 2 August 2021 and 4 October 2021;*
- *During that time the unit was open to the public to make purchases and was staffed throughout opening hours.*

This Declaration therefore confirms the continuous operation of the unit for retail shop use between 2 August 2021 and 4 October 2021. Through this period of use the retail shop use of the unit that was permitted under planning permission ref: 2014/0371/P, as amended by subsequent permission ref: 2017/1206/P, was instituted. A Class A1 use, as described by the planning permission and with reference to classifications set out in the Use Classes Order prior to 1 September 2020, was instituted.

The Lease

As noted above, the lease between UK Real Estate Limited and Rested UK Limited dated 12 July 2021 restricted the use of the unit to retail shop purposes only, as specifically noted at paragraph 4.8 of the lease. As such, throughout Rested UK Limited's occupancy this was the only use that was undertaken.

A copy of the lease (for both the landlord and tenant) is provided for reference.

Photographic Record of the Shop Use

A series of photographs of the shop in use were taken during its operation and these have been provided on a separate photo sheet. These highlight the following:

- *A range of items sold by Rested were available within the unit for customers to view and purchase;*
- *Many items were also placed on display in the windows of the unit include on all three of its street frontages (Kings Cross Bridge, Pentonville Road and Grays Inn Road);*
- *Signage was placed inside the unit to clearly advertise Rested and the operation of the shop;*
- *Staff were present in the shop to welcome customers, discuss the items they may want to purchase and to complete sales of items. This included smaller items such as sheets and other bedding that customers could walk out of the shop with;*
- *The shop's opening hours were prominently displayed at the main entrance and also on other frontages with signage directing customers to the main entrance.*

Photographs were taken by a representative of the landlord, UK Real Estate Limited, on 2 August 2021 (the first day of trading) and then further photographs were taken later on 6 August 2021 by Nigel Dexter of Savills.

Summary of the Evidence

Taken together, this evidence confirms that a shop use was instituted in the ground floor unit. This use reflects the Class A1 shop use that was described in planning permission ref: 2014/0371/P, as amended by subsequent permission ref: 2017/1206/P.

The national Planning Practice Guidance on lawful development certificates (specifically Paragraph 006 Ref ID: 17c-006-20140306) clearly notes that the applicant is responsible for providing sufficient evidence of the use on a balance of probability. Where there is no contradictory evidence against the case put forward by an Applicant then the certificate should be granted in accordance with that same balance of probability.

In this case, the package of evidence is clear in demonstrating that a shop use has been implemented at the premises.

In accordance with the current Use Classes Order (as amended), a shop use now falls within Class E (Commercial, Business and Service). In accordance with Section 55(2) of the Town and Country Planning Act 1990 (as amended), a switch to any other use within Class E does not constitute development and as such does not require planning permission.

Summary of the Certificate Application

A shop use has been instituted at the ground floor of the approved development constructed and completed on the site at 1-5 Kings Cross Bridge, 281 Pentonville Road and 368 Grays Inn Road. Evidence of the operation of that shop use has been provided.

The shop use is in accordance with the approved uses set out within the relevant planning permission ref: 2014/0371/P, as amended by subsequent permission ref: 2017/1206/P.

At the time that permission was granted, such a use was classified within the Use Classes Order as Class A1. Today, the shop use is included within Class E (Commercial, Business and Service) of the Use Classes Order, as amended by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (Statutory Instrument 2020 no. 757).

Therefore, as of today the lawful use of the ground floor unit is within Class E of the Use Class Order (as amended). In accordance with Section 55(2) of the Town and Country Planning Act 1990 (as amended), a switch to any other use within Class E does not constitute development and as such does not require planning permission.

This application therefore seeks a Certificate of Lawful Existing Use from the Council to certify that:

- *Following the institution of a shop use in the ground floor level of the completed development at 1-5 Kings Cross Bridge, 281 Pentonville Road and 368 Grays Inn Road, N1 9NW, the existing lawful use of the relevant floorspace now falls within Class E (Commercial, Business and Service) set out in Schedule 2 of the Use Classes Order (as amended); and*
- *In accordance with Section 55 of the Town and Country Planning Act (as amended), any change of use to another use within Use Class E does not constitute development and can be carried out lawfully without requiring planning permission.*

I trust that everything is in order. Should you need to discuss this application further, please do not hesitate to contact me as set out at the head of this letter.

Yours faithfully



Nigel Dexter
Associate