



SUPPORTING STATEMENT

57 FARRINGDON ROAD, LONDON EC1M 3JB

**APPLICATION FOR A CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR
DEVELOPMENT PURSUANT TO SECTION 192(1)(a) OF THE TOWN AND
COUNTRY PLANNING ACT 1990 (AS AMENDED)**

SUPPORTING STATEMENT

a. Introduction

This Statement is submitted in support of an application ('the Application') for a Certificate of Lawfulness of Proposed Use or Development ('CLOPUD') pursuant to Section 192 (1)(a) of the Town and Country Planning Act 1990 (as amended) ('the Act').

The Application is in relation to 57 Farringdon Road, London EC1M 3JB ('the Site') and is submitted to Camden Council ('the Council') on behalf of The trustees of The David Swan Will Trust ('the Applicant').

The Council is the local planning authority for the area in which the Site is located.

This Application seeks the Council's confirmation that the use of the first, second, third and fourth floors of 57 Farringdon Road for unrestricted Class E purposes is lawful. This confirmation is sought on the basis that a) the existing use of the building falls within Class E and b) as the existing use of the building is not restricted to one particular use under Class E, the proposed future use of the building for any use falling under Class E would be lawful.

This application is based on the operative planning permissions relating to these floors of the building. These applications include planning application reference N16/12/5/36566(R1), dated 25 October 1983 ('the 1983 Permission') and planning application reference PL/8601798 dated 19 February 1987 ('the 1987 Permission'). No further planning permissions have superseded these consents. Copies of these decision notices are enclosed at Annex 1 of this Statement.

Between them, the 1983 Permission and the 1987 Permission allow use of the first, second, third and fourth floors of 57 Farringdon Road as photographic studios with ancillary offices. Photographic studios fall under a Class E(g) use class under Schedule 2 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

Neither the 1983 Permission nor the 1987 Permission contain a condition that restricts the use of the first, second, third and fourth floors of 57 Farringdon Road to photography studio use only. Therefore, it follows that using the first, second, third and fourth floors of 57 Farringdon Road for any use falling under a Class E would be lawful as it would not constitute a material change of use requiring planning permission.

This Statement provides further detail and evidence to assist the Council in issuing a CLOPUD for unrestricted Class E use.

b. Legislative Framework

The legislative framework for the determination of the Application is summarised below:

1. Section 192 of the Act provides the framework by which a local planning authority can issue a CLOPUD:

(1a) If any person wishes to ascertain whether any proposed use of buildings or other land is lawful

(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect, and in any other case they shall refuse the application.

Section 192 goes on to determine that:

(3) A certificate under this section shall – (a) specify the land to which it relates; (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class); (c) give the reasons for determining the use or operations to be lawful; and (d) specify the date of the application for the certificate.

(4) the lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any matters relevant to determining such lawfulness. “

2. The National Planning Practice Guidance ('NPPG') provides the following guidance regarding lawful development certificates:

How is a lawful development certificate obtained and what does it mean?

Once a certificate has been granted following an application under section 192, it means that any proposed use or development in accordance with it must be presumed as lawful, unless there is a material change before the use or development has begun (section 192(4)).

Who is responsible for providing sufficient information to support an application?

The applicant is responsible for providing sufficient information to support an application...

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

How is an application for a lawful development certificate determined?

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 determining an application for a prospective development under section 192 a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

The NPPG notes that the onus in meeting the above requirements is with the Applicant. As such, information will be provided within this application to demonstrate that the above requirements have been met and that a CLOPUD should be issued.

c. The Operative Permissions for 57 Farringdon Road

Planning History

A review of the Council's online planning register has found that there are four planning applications listed in relation to the Site. This has been confirmed by receipt of the Council's Local Authority Search dated 16th July 2021 and provided at Annex 2. A full list of the applications on record is as follows:

Reference	Proposals	Status	Date
8601798	The use of the fourth floor as photographic studio with ancillary offices	Approved	12/02/1987
8400083	The retention of a dual ducting system at the rear of the building	Approved	20/03/1985
36566(R1)	To use the first, second and third floors as photographic studios with ancillary offices.	Approved	25/10/1983
35994(R1)	Erection of a new shopfront	Approved	02/06/1983

This planning history confirms that there are only prior applications which directly influence the operation and use of the building – the 1983 Permission and the 1987 Permission – which establish the use class of the first to fourth floors. As there have since been no applications to change this usage, it is considered that the current lawful use of these floors is as a photographic studio with ancillary office space.

A review of the associated decision notices for the 1983 Permission and the 1987 Permission identifies that both consents require that *"the offices [on the first to fourth floors] shall be used for purposes ancillary to the photographic studios only, and for no other purpose"*. However, neither the 1983 Permission nor the 1987 Permission contain a restrictive condition which state that the use of the building must be for photographic studios only.

Both the 1983 Permission and 1987 Permission contain a condition that requires the office usage to be ancillary to the photography studio use. However, as noted above, there is no restriction on the main, photographic studios use.

This review of the planning history register for the property is reinforced through information received from the Council in respect of Local Land Charges, which is enclosed at Annex 2. This confirms that there are no obligations within prior planning permissions or associated legal agreements for the building to remain in its current use. As such, not only is the building not restricted in its usage, but that if the building ceases use as a photography studio, then associated conditions for office space remaining ancillary to the photography studio usage would no longer have any effect and would not bind any future use.

It is also noted that in the light of the revision to the Use Classes Order and introduction of new Class E, The Council have considered that a robust justification for the continued Class E usage of buildings through a CLOPUD can be sufficiently provided through examination of the Site's planning history. This is demonstrated through the recently granted lawful development certificate application 2021/1969/P (60 Charlotte Street).

Have any material changes of use occurred since the grant of the operative permissions?

As explained further below in this Statement, photography studio use falls under Class E of the Use Class Order. Prior to the amendment of the Town and Country Planning (Use Classes) Order 1987 in September 2020, photography studios fell under a Class B1 use class.

During the period between the grant of the 1983 Permission and the 1987 Permission, no material change of use to the first, second, third or fourth floor of the building has occurred to a use falling outside of Class E or formerly Class B1. This is confirmed by lease information for the building. The primary leaseholders for the second to fourth floors have been photographers, but there been the disparate temporary use of the ancillary office space for more generic office use by Frank Adam (3rd), Assos (4th) Bear & Wolf (3rd) and Varg (2nd). The first-floor has been used by businesses operating in graphic design (Sauce) and videography (Nutmeg). These uses all fall under a general Class E, commercial, services and business use, or formerly, a general Class B1 business use. A copy of this lease information is provided at Annex 3.

It is also noted that there has been no enforcement action pursued by the Council in relation to any material change of use on Site. This is confirmed by the Local Authority Search provided at Annex 2.

Therefore, no material change of use has occurred since the grant of the operative permissions: the 1983 Permission and the 1987 Permission.

d. The proposed Class E use

The Use Classes Order

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 and had the effect of updating the Use Classes Order set out within Schedule 2 of the Town and Country Planning (Use Classes) Order 1987.

These regulations amended the Use Classes Order and rescinded the existing Use Classes A1, A2, A3 and B1 use classes (amongst others), which were merged into the new Use Class E along with some uses from Use Classes D1 and D2. The parameters of Use Class E now encompass the following operations:

- **E(a)** Shop other than for the sale of hot food
- **E(b)** Sale of food and drink for consumption (mostly) on the premises
- **E(c)** Provision of:
 - **E(c)(i)** Financial services,
 - **E(c)(ii)** Professional services (other than health or medical services), or
 - **E(c)(iii)** Other appropriate services in a commercial, business or service locality
- **E(d)** Indoor sport, recreation or fitness (not involving motorised vehicles or firearms)
- **E(e)** Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)
- **E(f)** Creche, day nursery or day centre (not including a residential use)
- **E(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.

Prior to the amendment to the Use Classes Order, Use Class B was previously split between B1(a) (Office other than a use within Class A2), B1(b) (Research and development of products or processes) and B1(c) (For any industrial process (which can be carried out in any residential area without causing detriment to the amenity of the area)). All three separate sub-classes converted to Class E in September 2020.

What is the lawful use of a photography studio?

The lawful use of a photography studio falls under Class E(g) of the Use Classes Order as it is 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*”. This is consistent with the former Class B1 Use Class which, until the amendment of the Use Class Order in September 2020, was 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*”.

The wording of the new Class E(g) and former Class B1 are identical.

Evidence that photography studios fall under Class E(g) or formerly Class B1 is widespread, however the following specific evidence is noted for the purposes of this CLOPUD application:

- The Land Use Gazetteer: Land Use Gazetteer: The Comprehensive Guide to Land Uses and Their Use Classes (December 2005) sets out that photography studios fall under Class B1 (refer to Annex 4).
- The Council’s Planning Register denotes a photography studio has historically been considered to sit within the wider Use Class B1. One example of this includes the granting of planning permission by the Council of application 2007/1649/P (110-114 Grafton Road) which sought permission for a photography studio and ancillary gallery space under this Use Class. There have been no applications determined more recently to contradict this position.

It is therefore clear that a photography studio use falls under Class E(g) of the Use Class order.

The use of the first, second, third and fourth floor as unrestricted Class E

For the reasons explained earlier in this Statement, the 1983 Permission and the 1987 Permission – the operative permissions – do not restrict the usage of the building to photography studio use only. Therefore, any change of use to another use falling within Class E of the Use Classes Order would not amount to development, as defined by Section 55 of the Town and Country Planning Act 1990 (as amended).

Further guidance on this is set out within the NPPG at Paragraph 12 Reference ID: 13-012-20140306 which states with respect of Class E, the following:

“Movement from one primary use to another within the same use class is not development, and does not require planning permission.”

The Commercial, Business and Service use class [i.e. Class E] provides for use, or part use, for all or any of the purposes set out in that Class”.

As such, because the operative permissions do not contain conditions that restrict the use of the first, second, third or fourth floor of 57 Farringdon Road to photographic studio use only, movement from this primary use (i.e. photography studio (Class E(g))) to another within the same use class (i.e. offices (Class E(g)(i)) or service use (Class E(c))) is not development and does not require planning permission.

It is therefore clear that any future use of the first, second, third or fourth floor of 57 Farringdon Road for any use falling under Class E of the Use Classes Order would be lawful.

e. Evidence submitted with the Application

We enclose the following evidence in support of this application:

- 1. Copies of the Decision Notices in support of the 1983 Permission and the 1987 Permission.
- 2. A copy of the Register of Local Land Charges for the Site, dated 16th July 2021.
- 3. Copies of Leases
- 4. Extract from Land Use Gazetteer: The Comprehensive Guide to Land Uses and Their Use Classes (December 2005)

The enclosed evidence demonstrates that it would be lawful to use the first, second, third and fourth floor of 57 Farringdon Road for Class E purposes.

f. Conclusion

In summary, the evidence submitted in support of this Application demonstrates that:

1. The current use of the first, second, third and fourth floor of 57 Farringdon Road are governed by two operative planning permissions – the 1983 Permission and the 1987 Permission.
2. The 1983 Permission and the 1987 Permission permit the use of the first, second, third and fourth floor of 57 Farringdon Road for photography studios with ancillary offices.
3. Neither the 1983 Permission nor the 1987 Permission contain a restrictive planning condition that limits the use of these floors of the building to photography studio use only.
4. Since the grant of these operative permissions, no material change of use has occurred.
5. Photography studios fall under a Class E(g) Use Class, which was formerly Class B1 before the amendment to the Use Classes Order in 2020.
6. Changing from one primary use to another primary use within the same use class does not meet the definition of development, as set out by Section 55 of the Town and Country Planning Act 1990 (as amended).
7. Therefore, the proposed use of the first, second, third or fourth floor of 57 Farringdon Road for any use falling under Class E of the Use Classes Order must therefore be lawful as it would not be development and it would not be a material change of use requiring planning permission.

For these reasons, we respectfully request that the Council grant a CLOPUD pursuant to Section 192(1) of the Act confirming the same.

g. List of Annexures

1. Annex 1 – Decision notices
2. Annex 2 – Register of Local Land Charges
3. Annex 3 – Leases

4. Annex 4 – Extract from Land Use Gazetteer: The Comprehensive Guide to Land Uses and Their Use Classes (December 2005)