

London Borough of Camden 2nd Floor
5 Pancras Square
c/o Town Hall
Judd Street
London
WC1H 9JE

Date: 10 March 2022

Our ref: 64423/01/BK/Jho/

Dear Sir/Madam

**Application for a Certification of Lawfulness of Existing Use or Development
for the existing development at 22-24 St Pancras Way, London, NW1 0NT**

On behalf of our client, Notting Hill Genesis, please find an application under Section 191 (1) (a) of the Town and Country Planning Act 1990 (as amended) for a Certification of Lawfulness of Existing Use or Development (CLEUD) application. The application seeks to confirm the lawfulness of the existing development at 22-24 St Pancras Way, Camden, London, NW1 0NT (the "Site"). It specifically relates to the development's approved roof level amenity space and play space.

The application is supported by:

- 1 Completed application form;
- 2 Site location plan (Ref 868R 001), prepared by European Urban Architecture Ltd
- 3 Decision Notice, dated 12 March 2007
- 4 Certificate of completion issued by LB Camden on 11 August 2009 (Ref QA 090811)
- 5 As built plans prepared by David Wood Architects;
 - Ref 450/001_X - Ref 450/003_X
 - Ref 450/120_X – Ref 450/143_X
 - Ref 450/200_X – Ref 450/204_X
 - Ref 450/300_X - Ref 450/302_X
 - Ref 450/310_X – Ref 450/313_X
- 6 Second Floor Plan (Ref 450/133_X), prepared by David Wood Architects
- 7 Roof Plan Sheet 1 (Ref 450/141_X), prepared by David Wood Architects
- 8 Roof Plan Sheet 2 (Ref 450/142_X), prepared by David Wood Architects
- 9 Roof Plan Sheet 3 (Ref 450/143_X), prepared by David Wood Architects
- 10 Email Correspondence with LB Camden dated between 10.2.22 and 22.2.22
- 11 Confirmation of Council Tax Registration details.

A payment of £234 (plus the £28 Planning Portal admin fee) has been made online via the Planning Portal in respect of the associated planning application fee. This has been determined in accordance with Regulation 11 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visit) 2012 (as amended).

Background

Planning permission 2006/5700/P (the “Permission”) was granted by London Borough of Camden Council (“LB Camden”) in 2007 for the following:

“Demolition of existing commercial buildings and replacement with a mixed use development of 4-6 storeys, comprising Class B1/B8 use units on the ground floor with 72 residential units (Class C3) on floors above (36x1-bed, 22x2-bed, 10x3-bed and 4x4-bed units)”

The approved development included provision for amenity space on the first and fifth floor of Building 22 (including children’s play space on the fifth floor) and the third and fifth floor of Building 24. The Permission included Condition 19 which required details of the children’s play area to be located on floor 5 of Building 24, to be submitted to LB Camden and approved prior to the development commencing. It also required the fixtures and fittings approved to be installed prior to occupation of the development. The condition read as follows:

19 Details of the children’s play space shall be submitted to and approved by the local authority before the development commences. The fixtures and fittings as approved shall be installed prior to occupation of the development and the play area shall be retained and maintained unless otherwise agreed by the local authority.

Reason: To ensure that the development makes satisfactory provision for play facilities in accordance with policy C3B of the London Borough of Camden Replacement Unitary Development Plan 2006.

The Permission was subject to a Section 106 agreement which required payment of £60,000.00 to be paid towards nearby public open space and play facilities to offset a shortfall in open space proposed by the development. This has been paid and all other obligations have been met.

The decision was taken by the applicant at the time, Genesis Housing Trust, to not complete the onsite roof amenity on floors 5 of both buildings due to concerns over anti-social behaviour (ASB) at the Site and the details required for condition 19 were not submitted to LB Camden. All other pre-commencement conditions were discharged prior to the commencement of development.

The building has been built in accordance with the approved plans prepared by David Wood Architects which support this application.

A certificate of completion notice following completion of the building was issued by LB Camden on 11 August 2009 confirming that the Site has been completed (see Enclosure 4: Certificate of completion). Following completion, the units within both buildings on the Site were registered for Council Tax in October 2009 (see Enclosure 12: Confirmation of Council Tax Registration details). Following completion and occupation of the development in 2009, the units have continued to be occupied.

Departure from Planning Permission

Genesis Housing Trust did not carry out the development fully in accordance with the planning permission. Specifically, Genesis Housing Trust did not provide the amenity space specified in the approved drawings and did not provide the play space required under condition 19. These areas of amenity space were not provided owing to concerns relating to ASB, the management challenges associated with roof level amenity

terraces – the design does not allow for passive surveillance or overlooking, and the associated service charge implications for the development’s affordable housing tenants. LB Camden was made aware of the ASB issues at the Site following occupation of the buildings.

Genesis Housing Trust did not discharge condition 19 prior to commencement, did not install the fixtures and fittings relating to the play area and have not therefore retained and maintained the play space in accordance with condition 19. The breach therefore relates to a departure from the approved drawings and a breach of condition 19.

On the basis condition 19 was a part pre-commencement condition and part a prior to occupation condition, we consider that the breach has occurred in two parts. These occurred between before the building was completed in August 2009 and October 2009 when the building was occupied, both of which are over ten years ago.

CLEUD Application

This application seeks to regularise the breach and confirm that the development at the Site as built is lawful as enforcement can no longer be taken at the Site.

Assessment

In determining this application, the consideration is whether enforcement action can be taken at the Site in accordance with Section 191 of the Town and Country Planning Act 1990 (as amended). Section 191 of the Act confirms when an existing use or development can be considered lawful. Section 191 (1) (a) of the Act is relevant to this application as we wish to ascertain whether the existing building as built is lawful.

In determining this, the following sections of the Act are of particular relevance:

Section 191 (2) of the Act which states that:

“For the purposes of this Act uses and operations are lawful at any time if—

(a)no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b)they do not constitute a contravention of any of the requirements of any enforcement notice then in force.”

Section 171B (3) of the Act which states that:

“In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.”

Section 191 (3A) of the Act states that:

In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a)the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,

(b)an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

In relation to Section 191 (3A) (a), Section 171B (3) of the Act (as amended) is the most relevant to this application and confirms that in the case of any other breach of planning control, no enforcement can be taken after the end of ten years from the date of the breach.

As noted earlier, in respect of this application, we consider the breach to have taken place in the following two parts:

- 1) From the date of commencement – this was sometime between 12 March 2007 when the Permission was issued and 11 August 2009 when the building was completed, see supporting certificate of completion at Enclosure 4.
- 2) From the date of occupation – this was occupied around October 2009, see supporting Council Tax register details at Enclosure 11.

It is evident from above that both breaches took place over ten years ago and therefore comply with Section 171B (3) of the Act. The evidence contained at Enclosure 4: Certificate of completion, and Enclosure 11: Confirmation of Council Tax Registration details, clearly demonstrate that the development was commenced, completed and occupied by 2009. Consequently, more than ten years has passed since the breach occurred.

We understand that no formal enforcement action has been taken on Site since the development's completion and there are no enforcement cases open at the Site. This has been confirmed by LB Camden (see email correspondence dated between 10 February 2022 and 22 February 2022 at Enclosure 10). This application therefore complies with Section 191 (3) and Section 191 (3A).

On the basis of the above, the Site as built and as per the plans accompanying this application, is considered lawful in accordance with Section 191 (2) of the Act.

Concluding Remarks

The application for a CLUED seeks to confirm that 22-24 St Pancras Way as built is now lawful. This on the basis that a breach occurred at the Site over ten years ago, enforcement action has not been taken by LB Camden and can no longer be taken. Consequently, the Site as built is lawful development in accordance with S191 (2) of the Act.

We trust that you have sufficient information to validate and determine this application for a CLUED expeditiously. Should you require any further information, please do not hesitate to get in touch with me.

Yours faithfully



Jonathan Hoban
Associate Director