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Via Planning Portal Only

25th April 2022

CERTIFICATE OF LAWFUL DEVELOPMENT (EXISTING) WITH RESPECT TO THE LAWFUL EXISTING C3 USE OF 13 BELSIZE CRESCENT, LONDON, NW3 5QU AS A SINGLE FAMILY DWELLING.

Dear Sir/Madam,

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 the lawful existing C3 use of no. 13 Belsize Crescent as a single family dwelling. The existing dwelling is 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;
- Existing floorplans
- Electoral register correspondence;
- Council tax records;
- Statutory Declarations from neighbouring occupiers regarding the continuous lawful use of the dwelling

Supporting Evidence:

- Appendix 1 – Council Tax Band Records
- Appendix 2 – Electoral Register Letter Dated 16/10/2007
- Appendix 3 – Electoral Register Letter Dated 07/02/2021
- Appendix 4 – Council Tax Records for 13 Belsize Crescent
- Appendix 5 – Statutory Declaration Dated 22/04/2022
- Appendix 6 – Statutory Declaration Dated 22/04/2022
- Appendix 7 – Statutory Declaration Dated 22/04/2022
- Appendix 8 – Statutory Declaration Dated 25/04/2022

The Site

The site is located on the southwest side of Belsize Crescent and comprises of a five storey mid terrace property. The site lies within the Belsize Park Conservation Area. The immediate setting comprises of similar residential properties, many of which have been converted into flats.

Relevant Planning History

On the 15th of December 1981, planning permission was granted (ref: G7/8/33/33075(R1)) for the erection of a roof extension to provide extra residential accommodation.

On the 12th of September 2000, planning permission was granted (ref: PWX0002678) for the change use of the lower ground and ground floor flats into one self-contained maisonette.

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 Gabbittas 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 existing dwelling has been used as a single residential dwelling for the past 27 years. Our client has occupied the dwelling since 1996, there has been no interruption of the residential use within this timeframe. Appendix 1 shows that the former 2nd Floor Flat, 1st Floor Flat, Hall Flat and Garden Flat were deleted off Camden's council tax records, leaving No.13 Belsize Crescent chargeable as a single dwelling, in regard to council tax.

Furthermore, an electoral register letter from 2007 (Appendix 2) confirms that the address appears currently (2007) and in the past as 13 Belsize Crescent, a single residential dwelling. A further Electoral Services Letter (2021) (Appendix 3) also confirms electoral registrations at 13 Belsize Crescent since/before the 1st December 2002.

Council tax bills dating from 2017/18 – 2021/22 (Appendix 4) show 13 Belsize Crescent as single dwelling. This provides further evidence that property has been continuously used as a single dwelling for 4 plus years and therefore lawful through the passage of time. A number of sworn affidavits have been submitted as part of this application, confirming the use of the property as a single family dwelling since 1999 (Appendix 5-8).

Summary & Conclusion

The evidence submitted demonstrates that 13 Belsize Crescent has been in continuous use as a single residential dwelling (C3 use class) 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 handwritten signature in black ink, appearing to read 'Stuart Minty', with a long, sweeping horizontal line extending to the right.

Stuart Minty
Director
SM Planning