



*Planning Statement – Certificate of
Lawfulness of Existing Use or
Development (CLEUD)*

*Relation to: Endsleigh Court, 24 Upper Woburn Place,
London, WC1H 0HA*

October 2022

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1 Introduction

- 1.1 JLL have been instructed by LKB Investments Limited to prepare a Certificate of Lawfulness of Existing Use or Development ('CLEUD') relating to Endsleigh Court, 24 Upper Woburn Place, London, WC1H 0HA.
- 1.2 The application is for a Certificate of Lawfulness of Existing Use which seeks to confirm the ground floor and lower ground floor has a lawful residential use. This application is submitted to confirm the lawful use of the property given that the Council no longer holds relevant planning records for this property.
- 1.3 The ground floor and lower ground floor have most recently been used for back of house operations including administration of the flats, storage for the Porters and laundry room since at least 1986. This use is ordinarily incidental to the property's lawful residential use and, as such, the Existing Use is categorised as falling within Use Class C3 as per the Town and Country Planning (Use Classes) Order 1987 (as amended).

Statement Structure

- 1.4 The remainder of this statement adopts the following structure:
 - Section 2 describes the site, surrounding area and planning history;
 - Section 4 provides the legislative context;
 - Section 5 sets out the case for lawful use; and
 - Section 6 provides the conclusions.

2 Site and Surrounding Area

The Site

- 2.1 The Endsleigh Court is located in the London Borough of Camden ('LBC').
- 2.2 Endsleigh Court ('the Site') is an existing residential block situated on the western side of Upper Woburn Place in Bloomsbury. The building comprises a ground floor and eight upper floors. There is an open car park to the rear, accessed via an undercroft from Upper Woburn Place.
- 2.3 It is bounded to the west by Endsleigh Street, the south east by Tavistock Square, the east by the A4200, and to the north by Endsleigh Gardens. Endsleigh Court is occupied by residential units on the upper floors as well as one residential unit at basement level and has a proportion of back of house floorspace across the ground floor and basement level associated with the residential use. It is understood these back of house areas are used by the Porters for office admin, kitchen, laundry etc. There is also a solicitors office located separately at ground floor level which does not form part of the area under consideration.
- 2.4 Endsleigh Court is a 1930s neo-classical design by Sir Albert Richardson, and sits adjacent to the Grade II listed Hilton Hotel. The building is constructed from red brick with stucco render to the lower floors, metal-framed windows and a mansard roof with brick central bay and side gables. This building forms a group with similarly scaled blocks on the opposite side of the street which provide a significant degree of enclosure to this end of Upper Woburn Place.
- 2.5 The Site is designated as an 'element of streetscape interest' within the Bloomsbury Conservation Area. The building is, therefore, a non-designated heritage asset. The Site also falls within a Designated View (Primrose Hill summit to St Paul's Cathedral – Right Lateral View). The Site is also within the Central London Area (CAZ).
- 2.6 The Site is located in very close proximity to a range of London Underground and National Rail Stations, including: Euston Station (250m to the north of the Site, providing access to national rail services to the north of England and Northern Line and Jubilee Line services); St Pancras Station (300m to the north east of the Site, providing access to Eurostar services to mainland Europe); and, Euston Square Station (350m to the west of the Site, providing access to Circle, Hammersmith and City and Metropolitan line services). Accordingly, the Site has an excellent Public Transport Accessibility Level ('PTAL' of 6b, on a scale of 1a-6b where 6b is the highest).

The Surrounding Area

- 2.7 The local surrounding area is mixed in both use and character. This includes university buildings, hotels and offices. The Grade I listed St Pancras Parish Church is located approximately 100m to the north of the Site, on the opposite side of Upper Woburn Place.

Planning History

- 2.8 The only planning records available online which relate to Endsleigh Court include minor applications such as replacement of all windows across all elevations and an application for signage. Details are provided below:
 - 2022/0559/P - Non-Material Amendment to change the manufacturer of the windows for the rear, sides and internal wells as granted under planning permission reference 2017/4663/P dated 02/10/17 for replacement of all windows across all elevations to existing block of flats (Class C3). Granted 28/06/2022.

- 2017/4663/P - Replacement of all windows across all elevations to existing block of flats (Class C3). Granted 02/10/2017.
- P9601973 - Erection of 3 no. Cellnet Dual Polar antennas and 2 no. Cellnet 600 mm Dia Microwave Dish antennas, all mounted on separate mounting poles on the roof top plant room, as shown on drawing no. 2442b/P01B. Granted 03/10/1996.
- CA3991/AD998 - The display of an internally illuminated sign measuring 27' 9" x 13" on the front of the entrance canopy and an internally illuminated sign measuring 6' 6" x 13" on each side of the entrance canopy. Granted 19/12/1978.
- TP1900/21617 - The carrying out of alterations to the surround of the main entrance and the erection of a canopy over this entrance at Endsleigh Court, Upper Woburn Place, St. Pancras. Granted 21/10/1964.
- AC2326/P1 - Three signs consisting of individual letters to read "ENDSLEIGH COURT" with green perspex faces, to be erected on the front leading edge and the two returns of a projecting canopy to be erected over the main entrance doors. Height of letters 6", lengths of signs 8'3" and 4'3", overall height 10'6". Granted 14/09/1964.

2.9 The description of development in a number of decision notices refer to the 'Class C3' existing flats. As such, the Property's lawful residential use is expressly authorised. The existing use of the ground or lower ground has not been expressly authorised by any planning permission but, there are no applications to substantiate otherwise. Therefore on the balance of probability this is Use Class C3.

3 Legislative Context

The Town and Country Planning Act 1990

- 3.1 Section 55 of the Act Meaning of “development” and “new development” states:

“(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

[...]

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land –

[...]

(d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such.”

- 3.2 Section 191 of the Act refers to Certificates of Lawfulness of existing use or development.

“(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

[...]

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) 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.

[...]

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”

- 3.3 It is against this provision that a certificate is being applied to demonstrate that the proposed works are lawful.

- 3.4 The applicant, under Section 191 of the Town and Country Planning Act 1990 as amended by Section 10 of the Planning and Compensation Act 1991, is entitled to seek a CLEUD by the submission of evidence relevant to the case, thereby seeking confirmation of the lawful use of the property in question.

- 3.5 Section 191(2) of the Act states that 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 an enforcement notice then in force. Section 191(4) states that if a local planning authority receives an application and is provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described therein, they shall issue a certificate to that effect, and in any other case they shall refuse the application. The burden of proof is firmly with the applicant and the relevant test is 'on the balance of probability'.

National Planning Practice Guidance

- 3.6 We would note that paragraph: 006 Reference ID: 17c-006-20140306 of the National Planning Practice Guidance (NPPG) states that in relation to determining lawful development certificates: *"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."*
- 3.7 As such the determination of a CLEUD application must be based solely upon the factual evidence in hand and relevant planning law. The onus of proof is held with the applicant in the submission of sufficient evidence to substantiate the lawfulness. Paragraph: 006 Reference ID: 17c-006-20140306 of the NPPG states that: *"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any 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."*
- 3.8 The onus of proving the lawfulness of an existing use rests with the applicant. The Courts have held that the relevant evidential test is 'the balance of probability' (see, for example *Gabbitts v Secretary of State for the Environment* [1985] JPL 630) i.e. as to the application, that it is more likely than not that the lawful use of the ground and lower ground within Use Class C3. This is the legal basis upon which the application must be determined by the Council. That being so, the applicant will demonstrate, by reference to the material submitted in support of the application, that a CLEUD ought to be granted by the Council, having regard both to the Act and the NPPG.
- 3.9 If the Council has no evidence of its own, or from others, to contradict or otherwise make the applicant's versions of events less than probable, there is no good reason to refuse a CLEUD application, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a CLEUD 'on the balance of probability'.

4 The Planning Justification

Introduction

- 4.1 This application for a Certificate of Lawfulness of Existing Use seeks to confirm the ground floor and lower ground floor has a lawful residential use.
- 4.2 The space in question has only ever existed as an ancillary part of the overall residential use, supporting the residential function. The space has been solely used in accordance with management of the flats within the building including administration of the flats, storage for the Porters and laundry room. This is evident from the photographs and statutory declaration provided.

The Case

- 4.3 We have been provided with a copy of the following documents which are included within this submission pack:
- (a) sworn statutory declaration from Paul Lamper, including:
 - (i) Site Plan (Exhibit A);
 - (ii) Detailed floorplans of the ground and lower ground (Exhibit B); and
 - (iii) Existing Condition Report dated June 2022, including photographs (Exhibit C)
- 4.4 It should also be noted that the decision notices in a number of planning history records refer to the 'Class C3' existing flats. As such, the Property's lawful residential use is expressly authorised. The existing use of the ground or lower ground has not been expressly authorised by any planning permission but, there are no applications to substantiate otherwise. Therefore on the balance of probability this is Use Class C3.
- 4.5 Collectively, the above demonstrates (clearly and precisely) that the ground and lower ground have been used for residential purposes, or purposes which are ordinarily incidental to the Property's lawful residential use since at least 1986 and indeed some time before.
- 4.6 Significant weight should be attached to the statutory declaration (sworn on oath) which 'talks to' the use of the ground and lower ground as incidental back of house rooms used in association with the Property's lawful residential use.
- 4.7 The Existing Use of the ground and lower ground floors is without doubt lawful. In particular, it did not (and does not) constitute a material change of use requiring planning permission as it is it ordinarily incidental to the lawful (residential) use of the Property. It is not, therefore, 'development' within the meaning of the Act.
- 4.8 But, in any event, even if it did, it is immune from enforcement action by the Council. The Council cannot take enforcement action in relation to a breach of planning control at the Property if that breach has subsisted for more than four years in respect of changes of use to residential use and ten years in all other cases. Therefore there is no basis on which the Council could take enforcement action in respect of the Existing Use.

5 Conclusion

Summary

- 5.1 This Planning Statement sets out the grounds for granting a Certificate of Lawfulness of Existing Use for the ground and lower ground at Endsleigh Court, 24 Upper Woburn Place, London, WC1H 0HA.
- 5.2 The evidence presented is overwhelmingly in favour of the Certificate being granted. The test in law is on the “balance of probability” and this is achieved easily with the evidence available.
- 5.3 For the reasons articulated above, comprehensive and clear evidence has been submitted in support of the application and demonstrates beyond any reasonable doubt (less still on the balance of probabilities) that:
 - (i) the Existing Use did not, and does not, require the grant of planning permission because it is not ‘development’ within the meaning of the Act;
 - (ii) in any event, the Existing Use is, and has been for a period of at least four years (and, indeed, considerably in excess of ten years too), a use within Use Class C3 such that no enforcement action has been, nor can be, taken by the Council in respect of the Existing Use; and
 - (iii) therefore, the Existing Use is lawful within the meaning of the Act.
- 5.4 In light of this, it is considered that the evidence submitted exceeds the relevant test – ‘on the balance of probability’ when determining the lawful use of the property; therefore, a Certificate of Lawfulness of Existing Use of Development (CLEUD) should be issued by the LPA.



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