

**GROUNDS FOR AN APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE –
BOX 9 OF APPLICATION FORM FOR LAWFUL DEVELOPMENT CERTIFICATE RELATING TO THE BOAT
HOUSE, RANELAGH DRIVE, TWICKENHAM TW1 1QZ (“the Property”)**

1. Summary

- 1.1. The Certificate of Lawfulness for Existing Use is sought on the basis that the Property has been used continuously as residential for a period in excess of four years, thereby rendering it immune from enforcement action and eligible for the grant of a certificate of lawfulness of existing use.

2. The Site

- 2.1. The Property consists of a two-storey building which is set on the south-west bank of the River Thames. The Property is located within a walled boundary and accessible via Ranelagh Drive. The Property contains three separate residential units:

- 2.1.1. One 1-bedroom flat on ground floor with its entrance on north west side of Property (“Unit 1”);
- 2.1.2. One 4 bedroomed flat on ground floor with its entrance on south west side of Property (“Unit 2”);
- 2.1.3. One 5 bedroomed flat on first floor with its entrance on south west side of Property (“Unit 3”)

as shown on plan attached at appendix DW/06 of David Wainwright’s statutory declaration. Also on the site is a double garage.

3. Development History

- 3.1. In September 1966, planning permission was granted to develop the land to erect a single, two-storey building comprising of a boat-building workshop and residential accommodation (reference 923/A/P1).
- 3.2. In 1976, permission was granted for the boat-building workshop to be used for the demonstration and production of films (reference 923/A/P3) and permission was later granted as a commercial recording studio in 1980 (reference 923/A/P8).
- 3.3. Two planning applications were made in September 2009. The first application (reference 09/2376/COU) (see appendix DW/04 of David Wainwright’s statutory declaration), sought a change of use from a redundant private music recording studio into a single private residence. Following advice from LBRT that the proposals were considered unacceptable the application was withdrawn.

- 3.4. The second application (reference 09/2459/FUL) (see appendix DW/05 of David Wainwright's statutory declaration), sought to change the use of the upper ground floor from a private recording studio to a residential dwelling, to retain the lower ground floor existing use as a private recording studio, extend the upper ground floor on to an existing terrace and extend the roof void to provide additional residential accommodation. Following advice from LBRT that the proposals were considered unacceptable the application was withdrawn.
- 3.5. The freehold title of the Property was held between July 2008 and July 2016 by two different companies. David Wainwright (who has provided a statutory declaration as part of this application) served as a Director of both companies during this period. From July 2016 it has been owned by Boathouse Twickenham Ltd whose Director, Jonathan Emuss, has provided a statutory declaration as part of this application.

4. Grounds for the Application

- 4.1. The relevant law for determining a CLEUD application is contained in Section 191 Town and Country Planning Act 1990 ("TCPA 1990") (as amended). Section 191(4) provides that:

'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...they shall issue a certificate to that effect...'

- 4.2. The relevant law in respect of lawful use is contained in section 171 B of the TCPA 1990 which at paragraph 2 provides:

'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.'

- 4.3. The term dwellinghouse is itself not defined in the TCPA 1990 however case law has established that *'the distinctive characteristics of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence.'*¹ Case law has further established that as long as the facilities for day-to day domestic living are provided, a building or flat being used as a HMO can still constitute a dwellinghouse².

- 4.4. Each of Units 1-3 constitute a dwellinghouse as they contain the facilities for day to day living (see statutory declarations provided as part of application for CLEUD). In the joined appeals of *Doncaster BC v Secretary of State for the Environment, Van Dyck v Secretary of*

¹ *Gravesham Borough Council v The Secretary of State for the Environment and Michael W O'Brien* [1982] P&CR 142

² *Michael Wordsworth Aimey v Newham LLB* [2015] PAD 27

State for the Environment (1993) 66 P. & C.R. 61, the Court of Appeal held that the four-year period applied to each flat where a house had been sub-divided into flats.

- 4.5. The statutory declarations provided evidence that Unit 1 has been used as a C3 use. TCP (Use Classes) Order 1987 defines a C3 unit as:

“Class C3

Use as a dwellinghouse (whether or not as a sole or main residence) by –

- (a) A single person or by people to be regarded as forming a single household;
- (b) Not more than six residents living together as a single household where care is provided for residents; or
- (c) Not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).”

- 4.6. The statutory declarations provided evidence that Units 2 and 3 have each been used as a C4 use. TCP (Use Classes) Order 1987 defines a C4 unit as:

“Class C4

Use of a dwellinghouse by not more than six residents as a “house in multiple occupation”.”

- 4.7. The second element of the test in s.171B is that there must have been four years continuous use. The statutory declarations provided evidence that the current use of Units 1-3 as residential began in January 2010 and were then used as such continuously for four years. Therefore immunity (under section 171 B (2) of the TCPA 1990) from any further enforcement action was obtained in December 2013.
- 4.8. The Court of Appeal in the case of *Thurrock BC*³ determined that the ‘unlawful use must continue to be an active use throughout the relevant immunity years period but can cease to be active once the lawful planning use has accrued at the end of that period’. The statutory declarations evidence that subject to short gaps in tenancies between a tenant leaving and a new tenant moving into the Property, the Property has at the least been let on assured shorthold tenancies since January 2010 until January 2014.
- 4.9. Obiter in the case of *Basingstoke and Deane BC v Secretary of State for Communities and Local Government [2009] EWHC Civ 1568* dealing with the continuity of use necessary in the immunity period, states that the question to ask is whether any enforcement action could have been taken at material times during that period, in relation to what was happening in the premises. The short breaks between tenancies of a few weeks would not have afforded the Local Planning Authority the ability to take enforcement action; the use of each of Units 1-3 is therefore evidenced to have been “continuous” for the purposes of section 171 B (2).
- 4.10. The Local Planning Authority after investigating the use of the Property in 2014, having served a Planning Contravention Notice, concluded that no further action could be taken as

³ *SoS for Environment, Transport and Regions v Thurrock BC* [20002] 2 PLR 43

the use had become lawful (see appendix DW13 to David Wainwright's statutory declaration).

- 4.11. Once immunity from further enforcement action has been obtained it can only be lost by either abandonment of the property, the creation of a new planning unit or a further material change of use⁴. As above, the statutory declarations evidence the continuous use between January 2010 and January 2014. From January 2014 until February 2017 the use has continued to be active and continuous, subject to a short break in the use of part of Unit 2 and 3 for refurbishment (August 2016 – January 2017) (see statutory declaration of Jonathan Emuss), applying case law to the above circumstances it is clear that this would not amount to a break. In any event no such gap post January 2014 would be of any relevance unless it was of such length that it amounted to abandonment of the use.
- 4.12. For the reasons given above and the evidence provided in the statutory declarations, it is considered that each of Units 1-3 in the Property have been used as dwellinghouse for a period in excess of four years and that on the balance of probabilities such residential occupation has been continuous. In light of the supporting evidence provided and the position taken by the Local Planning Officers in the past, we request that a lawful development certificate is issued.

⁴ *Panton & Farmer v SoS for the Environment, Transport and the Regions* (1999) 78 P & CR 186 - based upon well-established principles of planning law: see *Hartley v Minister of Housing and Local Government* [1970] 1 QB 413, at pp. 420-421 (Lord Denning MR); and *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, at pp. 143-144 (Lord Scarman))