

PLANNING REPORT

Printed for officer by
Ms Kerry McLaughlin on 23 February
2017

Application reference: 17/0668/ES191 ST MARGARETS, NORTH TWICKENHAM WARD

Date application received	Date made valid	Target report date	8 Week date
21.02.2017	22.02.2017	19.04.2017	19.04.2017

Site:

The Boathouse, Ranelagh Drive, Twickenham, TW1 1QZ

Proposal:

Three Seperate residential units and ancillary car parking (as per "grounds for application" unit 1 is used as C3, Units 2 and 3 are used as C4. ~~Each of the Units 1 - 3 is a single dwellinghouse.~~

Status: Pending Consideration (If status = HOLD please check that all is OK before you proceed any further with this application)

APPLICANT NAME

Mr Jonathan Emuss
64 New Cavendish Street
London
W1G 8TB

AGENT NAME

Mrs Alex Ground
2 Putney Hill
London
SW15 6AB

DC Site Notice: printed on and posted on and due to expire on

Consultations:

Internal/External:
Consultee

Expiry Date

Neighbours:

-

History: Development Management, Appeals, Building Control, Enforcements:

Development Management

Status: WNA

Date: 09/11/2012

Application: 09/2376/COU

Proposed Change Of Use From A Redundant Private Music Recording Studio Into A Single Private Residence.

Development Management

Status: WNA

Date: 09/11/2012

Application: 09/2459/FUL

Retention of existing use of lower ground floor as a private recording studio and extension residential use onto part of the existing upper ground floor terrace and into the roof.

Development Management

Status: PCO

Date:

Application: 17/0668/ES191

Three Seperate residential units and ancillary car parking (as per "grounds for application" unit 1 is used as C3, Units 2 and 3 are used as C4. Each of the Units 1 - 3 is a single dwellinghouse.

Enforcement

Opened Date: 14.11.2013

Enforcement Enquiry

Reference: 13/0584/EN/UCU

Recommendation:

The determination of this application falls within the scope of Officer delegated powers - YES NO

I therefore recommend the following:

1. REFUSAL ☒
2. PERMISSION ☐
3. FORWARD TO COMMITTEE ☐

This application is CIL liable

☐ YES* ☒ NO
(*If yes, complete CIL tab in Uniform)

This application requires a Legal Agreement

☐ YES* ☒ NO
(*If yes, complete Development Condition Monitoring in Uniform)

This application has representations online
(which are not on the file)

☐ YES ☒ NO

This application has representations on file

☐ YES ☒ NO

Case Officer (Initials): DPA

Dated: 15/05/17

I agree the recommendation:

Team Leader/Head of Development Management/Principal Planner

Dated: 15/05/2017

This application has been subject to representations that are contrary to the officer recommendation. The Head of Development Management has considered those representations and concluded that the application can be determined without reference to the Planning Committee in conjunction with existing delegated authority.

Head of Development Management:

Dated:

REASONS:
CONDITIONS:
INFORMATIVES:
UDP POLICIES:
OTHER POLICIES:

The following table will populate as a quick check by running the template once items have been entered into Uniform

SUMMARY OF CONDITIONS AND INFORMATIVES

CONDITIONS

INFORMATIVES

17/0668/ES191

The Boathouse, Ranelegh Drive, Twickenham

Site:

The application site comprises a two-storey detached building sited to the north of Ranelegh drive sited on the south west bank of the River Thames. The building is a former boat building workshop/house and has been used as a recording studio.

The building is not statutorily or locally listed but is sited within the St Margarets Conservation Area. The site is also sited within Metropolitan Open Land, a protected view corridor, and is within the functional floodplain being in Flood Zone 3b.

Planning history:

The most recent planning history is included below:

- 09/2459/FUL - Retention of existing use of lower ground floor as a private recording studio and extension residential use onto part of the existing upper ground floor terrace and into the roof - Decided as no further action be taken 09/11/2012
- 09/2376/COU - Proposed Change Of Use From A Redundant Private Music Recording Studio Into A Single Private Residence - Decided as no further action be taken 09/11/2012

The property was constructed in the 1960s when in September 1966 planning permission was granted to erect a two storey building comprising boat building workshop and residential accommodation (LB Hounslow ref: 923/A/P1). Permission was later granted for the workshop to be used for the demonstration and production of films (LB Hounslow ref: 923/A/P3) and as a commercial recording studio (LB Hounslow ref: 923/A/P8)

Proposal:

The application seeks a Certificate of Lawfulness of Existing Use or Development (CLEUD) to establish the use of the property [The Boathouse, Ranelegh Drive, Twickenham] as three separate residential units and ancillary car parking (as per "grounds for application" in the following manner:

- 'Unit 1' – One bedroom ground floor with entrance to north west/left hand side of property and falling within Use Class C3 use
- 'Unit 2' – Four bedroom ground floor flat with entrance on the south west side of property and falling within Use Class C4 use
- 'Unit 3' – Five bedroom first floor flat with entrance on the south west side of property and falling within Use Class C4 use

Professional comments:

Legislation & Case Law

Section 171B(2) of the Town and Country Planning Act 1990 (as amended) states that *'where there has been a breach of planning control consisting of a change of use of any building to a 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'*.

"Taking enforcement action" is defined in section 171A of the 1990 Act. It is the issue of an enforcement notice or the service of a breach of condition notice. The section also defines a "breach of planning control" (against which it is possible to take enforcement action) as the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.

The Planning Practice Guidance (PPG) outlines how Section 191 applications should be assessed by Local Planning Authorities, and specifies that the "*The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land...*" (Paragraph: 006; Reference ID: 17c-006-20140306; Revision date: 06 03 2014)

The Courts have held that the relevant test of the evidence on such matters is 'the balance of probability'. The PPG also states that "...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."

As noted within the applicants 'Grounds for Application...' document, the term 'dwellinghouse' is not defined within the Town and Country Planning Act 1990, though case law has established that '*the distinctive characteristics of a dwellinghouse is its ability to afford those who use it the facilities required for day to day private domestic existence*' [Gravesham BC v The SoS for the Environment and Michael W O'Brien [1982]].

The applicants 'Grounds for Application' note further case law which identifies that, as long as the facilities for day-to-day domestic existence are provided a building or flat in use as a House of Multiple Occupation (HMO) can constitute a dwellinghouse [paragraph 20 of appeal decision notice ref: APP/G5750/X/14/2216166: Michael Wordsworth Aimey v Newham LLB (2015) at 390/390b Sherrard Road Manor Park E12 6UQ].

Case law in the form of *Secretary of State for the Environment v Holding and Thurrock Borough Council* [2002] identifies that, to become lawful, a use must have continued actively throughout the four year period, to the extent that enforcement action could have been taken against it at any time during that period.

Only once lawful use 'rights' have been accrued in this way can the principle described in the *Panton and Farmer v Secretary of State for the Environment* (1999) judgement apply, where the use can become "dormant" without losing its use 'rights', unless it is abandoned, replaced by a different use, or extinguished following the formation of a new planning unit. Any significant interruption in the continuity of an unauthorised use, before it has gained rights under the four year rule (for use a single dwellinghouse), means that the particular breach is at an end, and, when the use recommences, the four year period must start again.

Assessment

The application is made on the basis that the premises, as indicated on the submitted 'Ground Floor' and 'First Floor' property plans (received 21/02/2017), has been continuously used as three separate residential units, which each constitute a single dwellinghouse, for more than four years and in the following manner:

- 'Unit 1' – One bedroom ground floor with entrance to north west/left hand side of property and falling within Use Class C3 use
- "Unit 2" – Four bedroom ground floor flat with entrance on the south west side of property and falling within Use Class C4 use
- 'Unit 3' – Five bedroom first floor flat with entrance on the south west side of property and falling within Use Class C4 use

The applicant has submitted a number of supporting documents in relation to the continuous use of the building as three separate residential units. These documents include:

Statutory Declarations

1. A signed Statutory Declaration of Mr David Wainwright dated 21st February 2017 confirming that he was a Director of three companies (Hi2 Ltd, with two subsidiaries in Venture (One) Ltd and Warren Farm (Culham) Ltd) which assumed freehold ownership of the premises from 22 July 2008 to 28 July 2016. The Declaration states that until 2008 the premises were used as a recording studio with ancillary storage and residential facilities located on the first floor, with all of the first floor occupied as one residential flat at the time of purchase of the premises by Hi2 Ltd.

The Statutory Declaration notes the previous planning history of the site with two formal planning applications submitted on the 10th & 19th September 2009 for the whole and partial change of use of the premises from recording studio to residential.

Paragraph 9 of the Declaration states that works were carried out in October 2009 to make the property suitable for residential accommodation in three separate flats, divided as shown on the submitted 'Ground Floor' and 'First Floor' property plans. The Declaration goes on to state in paragraph 10 that the units, subject to minor breaks, have been let on the basis of this division on Assured Shorthold Tenancies (ASTs) since January 2010. Further information is stated as to the nature of the occupation of the premises.

Part 16 notes issue (11 February 2014) and return (3 April 2014) of a Planning Contravention Notice (PCN) associated with a previous Planning Enforcement case opened against the premises. The Statutory Declaration states that *'By way of clarification of my response to the PCN, the Property was let as 3 separate units as per paragraph 9...'*

Finally the Declaration states that the premises were sold on 28 July 2016 to Boathouse Twickenham Ltd.

2. A signed Statutory Declaration of Mr Jonathan Emuss dated 20th February 2017 confirming that he is a Director of Boathouse Twickenham Ltd who purchased the premises on 28 July 2016 from Venture (One) Ltd. Paragraph 4 states that the premises were purchased as three units as per the 'Ground Floor' and 'First Floor' property plans.

The Declaration states that since the acquisition of the premises, notwithstanding a short break for fire safety improvements as specified in paragraph 5, the premises have been occupied under ASTs as residential accommodation.

Paragraph 9 states that prior to acquisition of the premises an application was made to the Local Authority to have the premises re-rated as domestic.

The Statutory Declaration reaffirms that, notwithstanding refurbishment, the premises has been in continuous occupation as residential accommodation

since Boathouse Twickenham Ltd acquired it and is now again being offered as residential accommodation under ASTs.

Other Supporting Information

1. Copy of Land Registry Title Deeds covering both Mr Wainwright and Mr Emuss ownership of the premises (through their respective companies) in DM/01 and JE/02;
2. Companies House documentation for both Mr Wainwright and Mr Emuss companies: Hi2 Ltd, Venture (One) Ltd, and Boathouse Twickenham Ltd in DM/02 and JE/01;
3. DW/03 - Marketing material for the Boathouse as submitted alongside planning applications 09/2459/FUL and 09/2376/COU;
4. DW/04 & DW/05 - Copies of application forms submitted under planning applications 09/2459/FUL (partial) and 09/2376/COU;
5. DW/06 - 'Ground Floor' and 'First Floor' property plans identifying units within premises;
6. DW/07 - Table of Assured Shorthold Tenancy agreements in place covering 47 tenancies over a period January 2010 to November 2016 and broken down by Unit and room;
7. DW/08 - 'Hi2 Limited Rent Schedule 2012-2013' sheet covering period December 2012 to November 2015. Company account statements/banking information covering period 21/04/2011 to 17/04/2013;
8. DW/09 - Hard copies of Assured Shorthold Tenancy Agreements for tenants as identified within the submitted 'Table of ASTs' under DW/07;
9. DW/10 - Email correspondence between David Wainwright and 6no. tenants. Copies of various correspondences issued to tenants addressed to the premises (with the premises addressed as 'Waits Boathouse', 'The Boathouse', and 'Boathouse');
10. DW/11 - Copy of Planning Contravention Notice (PCN) dated 11 February 2014;
11. DW/12 - Response from Mr David Wainwright to PCN dated 03 April 2014;
12. DW/13 - Email from LB Richmond upon Thames Council Planning Enforcement Officer concerning PCN and enforcement investigation dated 11 June 2014;
13. JE/03 - 2 x Entrust Engage International Ltd property inspection report dated 4th June 2016 - 30th June 2016, and 1st July 2016-31st July 2016;
14. JE/04 - 'Ground Floor' and 'First Floor' property plans identifying units within premises;
15. JE/05 - Fire Safety Report prepared by Crystal Clear Building Solutions dated 18/04/2016 and associated correspondence;
16. JE/06 - Table of Assured Shorthold Tenancy agreements in place covering 11 tenancies over a period March 2016 to November 2016 (and one on-going) and broken down by Unit and room;
17. JE/07 - Company account statements/banking information covering period 20/06/2016 to 01/02/2017;
18. JE/08 - Correspondence from Valuation Officer Agency dated 06 July 2016;
19. JE/09 - Copies of LB Richmond upon Thames Council Tax bills concerning three properties at 'Ground Floor Left Hand Side', 'Ground Floor', and 'First Floor' Flats, The Boathouse Twickenham, TW1 1QZ and dated 07 December 2016;
20. JE/10 - Picture of Unit 1

Assessment

On the basis of the information submitted within the application, the breach occurred in December 2009/January 2010, though it is noted that only two tenancy

agreements (ASTs) have been submitted to commence from this period (ending in June and July 2010). The company account information/bank statements submitted commence from April 2011. This results in notable gaps between the submitted information during this initial period (i.e. between August 2010 and March 2011).

Notwithstanding the above, further information in the form of ASTs and company account information/bank statements has been submitted for August-October 2011 and beyond. Upon review of the submitted ASTs it appears that there are periods of low occupancy of the premises (and 'Units' as defined within the submitted property plans), however the submitted company account information/bank statements note regular income of rent from tenants (where corresponding ASTs have not been submitted) and outgoings of utilities (Southern Electric, British Telecom, UK Fast). It is acknowledged that other smaller gaps between ASTs exist, with some overlap in the occupancy of identified rooms. It is considered probable that such gaps can be accounted for in the time-period between one tenant leaving and a replacement moving in, with it noted within the submitted Statutory Declarations that such overlaps can be accounted for in tenants moving between rooms without getting a new tenancy agreement, or moving in whilst awaiting a preferred available room.

However, upon closer review of the submitted ASTs, notwithstanding the ground floor property identified as 'Unit 1' within the submitted information and property plans (which is typically referred to within the documents as 'Self-Contained Flat' or 'Downstairs self-contained flat'), the remainder of the submitted ASTs, covering the other bedrooms within the premises, do not differentiate any further between Units with no distinct reference to any ground floor flat ('Unit 2') or first floor flat ('Unit 3'). Instead, the submitted ASTs describe each of the rooms by their physical location within the premises (e.g. 'downstairs middle studio room') or their attributes (e.g. 'ground floor studio facing River', 'Upstairs large room facing balcony', 'Upstairs double room ensuite').

The above is furthered by the previous owner's (Mr David Wainwrights) response to the Council's Planning Contravention Notice issued 11 February 2014. Within the submitted response to the PCN (dated 3 April 2014), the owner in section 3 identifies that a 'self-contained flat' was created in September 2009, with section 5 identifying that *"The property has been divided into 2 self-contained residential dwellings-Ground Floor Flat 1 bedroom studio flat and a self-contained house"*. On the basis of the information submitted in support of the use of the premises as 2 residential units, the enforcement case was closed by the Council. Notwithstanding paragraph 16 of Mr Wainwrights submitted Statutory Declaration, the information included within the PCN response appears to contradict details of the current arrangement, the sought numbers of units, and other information submitted with application.

It is also pertinent to note that the property was re-valued as domestic by the Valuation Office in July 2016, whereupon this valuation was backdated to 1 April 2015. A search of the authorities Council Tax records and Council Tax bills submitted by the current owner correspond with this. Prior to April 2015 the premises was rated for Business Rates up to 31/03/15 as commercial with two entities 'Ground Floor The Boathouse' and 'First Floor The Boathouse'.

Section 171B(2) of the Town and Country Planning Act dictates that no enforcement action can be taken after the end of a period of four years beginning with the date of the breach. The Courts have held that the relevant test of the evidence on such matters is *'on the balance of probability'* with the Planning Practice Guidance advising that *"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."

In this instance, whilst weight has been afforded to the submitted Statutory Declarations and other supporting documents/information, the information submitted by the previous owner of the premises within their response to the Council's Planning Contravention Notice (dated 03 April 2014) is considered to contradict the applicant's evidence with regards to the arrangement and number of units within the premises. The Council consider that on the balance of probability it cannot be demonstrated that the residential use of the premises as three separate residential units (Unit 1-within Use Class C3 use; and Unit 2 & 3-within Use Class C4 use) has subsisted for a continuous period of 4 years.

The applicants evidence is therefore not considered to be sufficiently precise or unambiguous to justify the grant of a certificate of lawfulness for the use of the premises on the balance of probability, and it is recommended that the CLEUD by refused.

Recommendation: REFUSE