

# RUNDELL ASSOCIATES

Rundell Associates  
12 Salem Road  
London  
W2 4DL

15<sup>th</sup> September 2023

Dear Sir/Madam,

**LAWFULL DEVELOPMENT CERTIFICATE FOR AN EXISTING USE;  
CONTINUED USE OF TERRACE IN BREACH OF CONDITION 5. OF PLANNING APPROVAL  
04/00783/FULL**

We are writing to apply for a Certificate of Lawfulness for an existing use under Section 191 of the Town & Country Planning Act 1990 (as amended) in respect to the continued existing use of a terrace in breach of condition 5 of planning permission 04/00783/FULL.

**The Application Site**

The site is located at the land to the rear of 21-23 Craven Hill, now known as 23a Craven Hill. The site lies within the Bayswater Conservation area and the building is not listed. Planning Application 04/00783/FULL was approved on the 20<sup>th</sup> of May 2004 at committee, for the erection of a new 3 bedroom dwelling to include basement, ground, first and second floor.

**The Statutory Framework**

This application is made pursuant to S191(1)(c) of the TCPA 1990, which allows for a certificate to be issued by the Local Planning Authority to determine if an existing use is lawful.

When an application for a Certificate of Lawful Development is made, the Council is required to consider the lawfulness of the use at the time of the application and to issue a certificate if it is satisfied that it should do so. Lawfulness is defined by S191(2) of the Act as follows:

- (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.

Section 171B of the Town and Country Planning Act 1990 defines the time limits within which enforcement action can be undertaken. In the case of contravention of a planning condition this falls into the category of "any other breach of planning control", 171B (3) defines the time limitation as follows:

- (3) 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**.

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## **List of Documentary Evidence with relevant commentary**

### APPENDIX A – Planning permission notice 04/00783

Record of the planning approval received on the 20<sup>th</sup> of May 2004 for the erection of a new 3 bedroom dwelling. Condition 5 of this planning permission states;

*The flat roof at first floor level shown on drawing No. P2309/303 shall not be used as a terrace or sitting out area*

### APPENDIX B – Building Control record 03/02426/OTHBN

The council record for the building control application is included in this application to illustrate when the construction works were completed. Construction works relating to the 2004 permission (building control reference 03/02426/OTHBN for the "Construction of three bedroom dwelling with basement, ground and first floors" at "Land To Rear Of 21-23 Craven Hill London") were completed on the 12th of September 2005. This was the date Westminster Council Building Control department deemed the building work complete.

### APPENDIX C - Statutory Declaration TG

Signed affidavit from previous resident who resided in the house between 2012 through to 2018. The signed affidavit declares;

*That throughout the time that I occupied the Property as a tenant, the flat roof area on the 1<sup>st</sup> floor of the Property was used as a roof terrace without any objection, complaint or hindrance and without any threat of enforcement action by the local authority for lack of planning consent or building regulations consent for the use of the roof as a terrace.*

### APPENDIX D - Craven Hill particulars February 2013 (dated at the bottom of last page)

In February 2013, Knight Frank marketed the property for sale. The particulars of the property include floorplans of the house (produced by Knight Frank) showing the flat roof at first floor level in use as a terrace. The particulars also explicitly refer to the roof terrace as a space for entertaining;

*"There is a spacious roof terrace, perfect for outside entertaining"*

### APPENDIX E – Enforcement action record

The map is a record of all enforcement action undertaken by the council for all time. The map shows that no enforcement notice has been issued to the property, therefore no action has been taken against the use of the flat roof at first floor level as a terrace.

## **The Case to be Made**

It is appreciated that the onus lies with the applicant to prove the case and in this instance the case to be made is that no enforcement action can be taken because the time for enforcement has expired. Due to the nature of the breach of condition no.5 of planning permission 04/00783/FULL; the limitation of enforcement action is 10 years beginning with the date of the breach.

Although the exact date of breach cannot be determined, we can say with certainty that the flat roof at first floor level was in use as a terrace since 2012 as evidenced by the statutory declaration made by the tenant at that time (Appendix C). Further to this, we can also state with certainty that in February 2013 when the property was being sold, the particulars produced by Knight Frank showed the terrace on their plans and referred to the terrace explicitly in the sales literature.

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## **Summary of Lawfulness**

In this case we can demonstrate the following:

- Planning permission 04/00783/FULL was granted for the creation of a 3 bedroom dwelling with the condition to not use the flat roof at first floor level as a terrace.
- Construction works were completed on the 12<sup>th</sup> of September 2005.
- The flat roof at first floor level was in use as a terrace in 2012 as stated in the sworn affidavit by the tenant at the time.
- The flat roof at first floor level was marketed as a terrace by Knight Frank in February 2013.
- No enforcement notice has been issued relating to the breach of condition.

By virtue of section 171B (3) no enforcement action can be taken after the end of the period of ten years beginning with the date of the breach, provided no enforcement notice has previously been issued. The above evidence proves that the flat roof at first floor level was in use as a terrace at least ten years ago and that no enforcement notice was ever issued. Therefore, no enforcement action can be taken and the existing use of the flat roof at first floor level as a terrace should be granted a certificate of lawfulness.

## **Conclusion**

We believe that the evidence we have produced has discharged the onus on the applicant to prove on the balance of probabilities that this claim for the Certificate is justified. The evidence is both clear and unambiguous, and we trust that a favourable decision can be issued.

Yours sincerely

Sam Rose

Associate, Rundell Associates