

BER/566972C

19 January 2024

Basingstoke and Deane Borough Council
Planning Development
Civic Offices
London Road
Basingstoke
RG21 4AH

Dear Sirs

Application for a Certificate of Lawfulness for Existing Use (“CLEUD Application”) at Goose Hill House, Ashford Hill Road, Headley, RG19 8AT (“the Properties”)

1. We act for Greatworth Property Managers Limited, our client (“the applicant”) and our Partner, Bernard Ralph has specialised in planning law for over 18 years and is advising the applicant.
2. The freehold owners of the Properties, via the applicant, have requested that we provide a legal opinion in relation to the application for a CLEUD at the Properties for their Uses as two (2) commercial buildings occupied by commercial tenants that formed single (and separate) planning units comprising:
 - i) An office building (known as “The Stables”) entirely separate to the residential use of the dwelling house in its vicinity which has an established use within Class E (g)(i) as it is and has been used as an office to carry out any operational or administrative functions; and
 - ii) A storage/warehouse building (“Building A” as referenced within the accompanying Statutory Declaration) entirely separate to the residential use of the dwelling house in its vicinity which has an established use within Class B8 – storage or distribution use for storage or as a distribution centre.
3. According to the freehold owners of the Properties and their evidence by way of a statutory declaration, both of the buildings comprising the Properties were in situ when they purchased the land containing the Properties and the dwelling house and related buildings in 1991.
4. There seems to be no planning history that reveals what uses the Properties were put to prior to The Stables and Building A establishing their commercial uses in Class E and Class B8, respectively.
5. The CLEUD Application and its supporting evidence supports the fact that the Properties became commercial buildings¹ as their separate functions had the effect of breaking their connection to the house. They can therefore no longer be considered to be ancillary or incidental to the house.
6. From 1991 until 2005 Building A was used for the owners’ separate company registered business, Codelocks Limited. Thereafter a motorcycle company, “The Carnaby Motorcycle Company” rented Building A until 2015. From 2018 to the present day, Building A has been used as per the attached Statutory Declaration, thereby retaining its B8 use class up until the date of the CLEUD Application.

7. The Stables was converted to office space by the owners in 1992 and has been in an office use continuously ever since. Between 1992 and 2005 it was used as an office by Codelocks Limited. Since 2005 up until the date of the application, it has been used by one tenant, Catherine Blades Bridal Limited that supplies wedding dresses.
8. Put simply, Building A (from 1991) and The Stables (from 1992), (the starting point for the period for establishing immunity from planning enforcement with their established change of use), the Properties formed two separate planning units as commercial businesses within Class E (g) (i) and Class B8.
9. The *Town and Country Planning Act 1990* at section 191 (Certificate of Lawfulness of Existing Use or Development) where relevant for the purposes of the CLEUD Application states:
 - (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,...
 - (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 (...because the time for enforcement action has expired or for any other reason);*
 - (b) *Do not contravene an enforcement notice*
 - (4) *If, on 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 described in the application, they shall issue a certificate to that effect.*
10. The wording of subsection (4) above accordingly makes it clear that there is no discretion on the part of the local planning authority if appropriate and compelling information is provided to it.
11. The burden of proof is on an applicant for a CLEUD. The standard of proof is on the balance of probabilities.
12. There is other evidence to support the commercial uses of the Properties by way of a rateable valuations from the relevant valuation agencies and the payment of business rates incurred on the Properties. The properties also have their own separate electricity meters and supplies. Please refer to the addendums attached to this letter evidencing the same, along with other evidence.
13. The relevant guidance in the online (National) Planning Policy Guidance which encapsulates the relevant legislative position states:

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 is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.

14. We are instructed that the applicant is confident that the local planning authority (“LPA”) cannot contradict the precise and unambiguous evidence it has. The LPA must, given the applicant’s meeting of the burden and standard of proof, therefore grant the CLEUD.
15. The relevant period for establishing immunity from planning enforcement and consequently a lawful use for a single dwelling house is contained within the *Town and Country Planning Act 1990* at Section 171B (3) which states that:

(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.
16. The Properties business uses have been established as lawful (with Building A) from 2001 and (The Stables) from 2002 following the ten years uninterrupted use having been established in each building. There has been no change in planning use terms since those dates up until the application date for the CLEUD. Consequently, any breaches have been continuous for a period in excess of ten years meaning that the provisions set out in Section 171B (3) are satisfied. As such, there is ample evidence to support that position submitted with the application for the CLEUD.
17. In accordance with the detail included in the application for the CLEUD, the Properties have not been ancillary or part of a larger residence in the vicinity. The Properties were used with a business use for a continuous period of more than ten years when rental income for both buildings was reported to HMRC and included separate tenancy agreements and rented to:
 - a. The Carnaby Motorcycle Centre;
 - b. Catherine Blades Bridal Limited.
18. The evidence that demonstrates the established business uses includes:
 - a. Statutory Declaration dated 17/01/2024 (“Addendum 1”);
 - b. Lease to Catherine Blades Bridal Limited in respect of the Stables business use (“Addendum 2”);
 - c. Business Rates assessments for both buildings (“Addendum 3”);
 - d. Correspondence between the freehold owners of the Properties and Basingstoke and Deane Council regarding business rates (“Addendum 4”);
 - e. Agent letting details for Building A (“Addendum 5”);
 - f. Confirmation from the landowners’ accountants regarding rental income (“Addendum 6”); and
 - g. Photographs of the separate electricity meters (“Addendum 7”); and
 - h. Photographs of existing buildings (“Addendum 8”).
19. In accordance with Section 171B of the *Town and Country Planning Act 1990* and as the applicant’s case is that the time for enforcement action has expired, the local planning authority must start with the date of the application and then consider the relevant ten year period prior to that date.

20. The relevant legislative sections referred to in the above paragraphs mean that the local planning authority has ten years to take enforcement action in relation to a change of use to the business uses. Failure to take enforcement action within that ten year period means the right to take that action by the local planning authority lapses and the business uses for the Properties in breach of planning control becomes lawful provided that no enforcement notice is in force at the time the application for a CLEUD is made. As the local planning authority would be aware there is no relevant enforcement notice in relation to the Property.
21. We look forward to receiving confirmation from the LPA that it will grant the relevant certificate on the basis that business uses have been established for the relevant ten year period and have not been abandoned.

Please contact Bernard Ralph of this firm at [REDACTED] in the event of any queries in relation to this letter.

Yours sincerely,

[REDACTED]

JMW SOLICITORS LLP