RODWAY PLANNING
CONSULTANCY LIMITED

STATEMENT OF CASE

'Certificate of Lawfulness for an existing use or development - continuance of the use of Suite 4 for Office Use (Use Class B1(a))'

Suite 4, Knighton Chambers,
39-41 Aldwick Road, Bognor Regis,
West Sussex, PO21 2LN

July 2020

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STATEMENT OF CASE

CERTIFICATE OF LAWFULNESS IN RELATION TO AN EXISTING USE:

Suite 4, Knighton Chambers, 39-41 Aldwick Road Bognor Regis, West Sussex, PO21 2LN

1.0 INTRODUCTION

1.1 I am instructed on behalf of my client, Star Property Investments, to submit an application for a Lawful Development Certificate in relation to Suite 4, Knighton Chambers, 39-41 Aldwick Road, Bognor Regis.

1.2 The application seeks to obtain a Lawful Development Certificate as legal confirmation that the premises are lawfully in use as offices (Use Class B1(a)).

1.3 The available evidence makes it clear that the subject building has been in continuous commercial use (B1(a) use class) **since 1968** up to the present time.

1.4 This statement sets out a brief history of the building and then addresses the legal basis for the application and the evidence submitted to justify the facts of the case. We consider that this evidence sufficiently demonstrates, on the balance of probability, that the use of the building for B1(a) use class purposes and has been operating in this fashion continuously for longer than the 10-year qualifying period. We therefore consider there to be no reasonable basis to withhold a Lawful Development Certificate.

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2.0 SITE DESCRIPTION

2.1 The existing building (No. 39-41 Aldwick Road) is two-storeys with accommodation in its roofspace served by dormers. It is situated on a corner plot, fronting onto Aldwick Road, and Victoria Road South to its east side. Suite 4 (which is the subject of this LDC application), is situated at first floor level.

Fig 1. Aldwick Road elevation (courtesy of Google Maps)

2.2 The property is located outside, and to the west of Bognor Regis town centre. Aldwick Road has a number of commercial premises, including a parade of shops further to the west. The coastline and beach at West Bognor lies a short distance to the south.

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Fig 2. Aerial plan of Knighton Chambers (courtesy of Promap)

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3.0 PLANNING HISTORY

3.1 According to the Council's online records, the premises has the following relevant planning applications relating to it:

- **BR/186/48** - Change of use from hotel and restaurant to offices and restaurant – Approved 13th January 1949

- **BR/186/48/C** - Use of offices and restaurant for electro therapist chiropody and masseur – Approved 31st August 1949

- **BR/186/48/D** - Use of offices as a consulting room for doctor of psychology – Approved 31st August 1949

- **BR/186/48/E** - Use of room as hair stylist consultant – Approved 8th October 1951

- **BR/186/48/G** - Change of use of 4 rooms on 2nd floor from residential flat to offices – Approved 10th July 1957

- **BR/412/68** - Change of use from restaurant to Estate Agents Office – Approved 9th September 1968

- *(**BR/100/93/B** - Proposal Alterations to form 7 self-contained office suites – Building Regulations passed 23rd June 1993)*

- **BR/173/01** - Change of use from office (Suite 4) to osteopathy clinic – Approved 25th July 2001

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4.0 CONSIDERATIONS

Legal Background

4.1 The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required. Therefore, for the purpose of obtaining a certificate of lawfulness, Section 191 of the Town and Country Planning Act 1990 states:

Certificate 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;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted 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.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

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(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

(a) the time for applying for an order under section 171BA(1) (a "planning enforcement order") in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.]

(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.

(5) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

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(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.
(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

(a) section 3(3) of the M1Caravan Sites and Control of Development Act 1960;

(b) section 5(2) of the M2Control of Pollution Act 1974; and

(c) section 36(2)(a) of the M3Environmental Protection Act 1990.]

4.2 In respect of the 'time for enforcement action' Section 171B(2) of the 1990 Act states in respect of change of use not relating to a residential use that:
"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."

4.3 Furthermore, the National Planning Practice Guidance (NPPG) states:
"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. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.
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.
In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority

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to understand exactly what is involved." (Paragraph: 006 Reference ID: 17c-006-20140306)

(i) Time Limits

4.4 The Planning and Compensation Act 1991 introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control.

4.5 The time limits are:

1) four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially complete;
2) four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken;
3) 10 years for all other development. The 10 year period runs from the date the breach of planning control was committed.

4.6 Once the relevant time limit has passed, the development and/or use becomes lawful, in terms of planning.

Evidence

4.7 The above-mentioned extracts provide the legal basis for this application and subsequently we have provided the following evidence to demonstrate that Suite 4, 39-41 Aldwick Road has been used as offices for a continuous period in excess of 10 years:

[redacted]

(i) Statement of Truth by Mr. Derek Pratt, signed and dated 15th of June 2020

4.8 It confirms that Mr. Pratt has been a director of the family company Windruff Holdings Limited whose registered office is at 22 Felpham Road, Bognor Regis, West Sussex, PO22 7AZ since June 1980.

4.9 It states that since June 1980 until the present day, Mr. Pratt has been continuously employed at Windruff Holdings Limited as a director.

4.10 It confirms that during his time at Windruff Holdings Limited, Mr. Pratt has known the buildings at Knighton Chambers, 39 Aldwick Road, Bognor Regis, West Sussex to be utilised as offices and premises and from his knowledge and researches he believes that the property has always been used as offices since at least the date when Windruff Holdings Limited purchased it in 1968.

(ii) Lease, signed and dated 8th August 2004

4.11 Accompanying this submission is a lease between Windruff Holdings Limited (the owners), and Impetus Consulting Limited, dated 8th August 2004. This document at page 2 confirms that *"'the demised premises' shall mean all those premises shown for the purposes of identification only coloured red on the plan annexed hereto and known as* ***office suite 4*** *situate on the first floor of 39 Aldwick Road, Bognor Regis..."* [my emphasis]. The plan on page 5 of this document clearly identifies Suite 4 of Knighton Chambers as the part of the building that the lease is referring to (outlined in red). This is identical to the area shown on the drawings submitted with the Lawful Development Certificate application.

4.12 Further clause 3.15.1 states that the lessee should not *"use or suffer the demised premises or any part thereof... otherwise than as an office within User Class B1 of the Town & Country Planning (Use Classes) Order 1987 for the Lessee's business..."*

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4.13 Therefore it is clear that the Lease not only refers to Suite 4 of the building, which is identical to the part of the buildijng to which this application refers, but it also confirms that this part of the building was to only be used as an office. This Lease dates from 2004 – 16 years prior to the date of this Certificate of Lawfulness application, and post-dating the 2001 permission for the change of use of Suite 4 from an office to an osteopathy clinic.

(iii) Lease, signed and dated 9th November 2012

4.14 In addition, we also supply a lease between Windruff Holdings Limited (the owners), and Thomas Cecil Thomas, dated 9th November 2012. The cover page of this document confirms that the lease relates to "Suite 4, Knighton Chambers, 39 Aldwick Road, Bognor Regis..." The document at page 5 clearly identifies that the permitted use is *"to be used as an office within User Class B1 of the Town & Country Planning (Use Classes) Order 1987".*

4.15 The plan on page 25 of the lease outlines Suite 4 in red, as identified as the premises to which the lease relates.

4.16 Again, it is therefore clear that the Lease not only refers to Suite 4 of the building, which is identical to the part of the building to which this application refers, but it also confirms that this part of the building was to only be used as an office. This Lease also post-dates the 2001 permission for the change of use of Suite 4 from an office to an osteopathy clinic.

(iii) Planning Permission

4.17 We are aware that the building was originally in use as a hotel and restaurant. In 1948 permission was granted to use the premises as offices and a restaurant (presumably a mix of B1 and A3 use classes). Subsequent permissions for use of the premises (or part of) for health/clinic-like purposes were then approved later in 1949 (presumably D1 use class). In 1950 one room was permitted to be used by a hair

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stylist (possibly A1 use, or could be D1 use again). In 1957 the top floor of the building was permitted to change from a residential flat to offices. The restaurant was permitted in 1968 to change to an estate agents office (A2 use class).

4.18 In 1993, (although no planning permission was granted), Building Regulation approval was given by the local authority for the creation of 7 office suites (B1[a] use class). It is possible that Arun Council determined at that time that planning permission was not required. **Irrespective, and provided the use has subsisted since that time (or at least for 10 years), then due to the passage of time this office use would have become lawful in planning terms.**

4.19 It is noted that in 2001, one of the offices (Suite 4) was granted permission to be used as an osteopathy clinic (D1 use class). **To our knowledge, this use was never implemented and as such the building has remained as an office/ B1(a) use for in excess of 10 years, which accords with the Statutory declaration by Mr. Derek Pratt, signed and dated 15th June 2020, and the lease between Windruff Holdings and Impetus Consulting for an office use at Suite 4, signed and dated 8th August 2004.**

Use Class

4.20 The Town and Country Planning (Use Classes) Order 1987 sets out at Part B as follows:

Class B1. Business

Use for all or any of the following purposes—

(a) as an office other than a use within class A2 (financial and professional services),

(b) for research and development of products or processes, or

(c) for any industrial process,

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being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

4.21 Given the evidence obtained in support of this Certificate of Lawfulness application, it is clear that the subject part of the building has been in a B1(a) use for in excess of the 10 year qualifying period.

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5.0 SUMMARY

5.1 This application seeks to obtain legal confirmation that an existing premises known as Suite 4, Knighton Chambers, 39-41 Aldwick Road has a lawful use as offices (B1[a] use class) in line with Section 191 of The Town and Country Planning Act 1990.

5.2 We conclude that on the basis of the evidence supplied, that the premises use as offices (B1[a] use class) is lawful and has been operating for longer than the qualifying periods set out in Section 171B of the 1990 Act. It is clear from the evidence supplied that Suite 4 has been used as offices, as endorsed by the two submitted Leases, which date from 2004 and 2012. On the balance of probability the actual date that this use commenced was earlier still, with Mr Pratt confirming in his Statement of Truth that *"I believe that the property has always been used as offices since at least the date when Windruff Holdings Limited purchased it in 1968".* As such, the building (and Suite 4 contained therein) have been used for a B1(a) use continuously for in excess of 10 years, and in planning terms it is therefore lawful.

5.3 Taking into consideration the legal tests by which a Lawful Development Certificate application should be considered, we believe that we have adequately shown, on the balance of probability, that Suite 4, 39-41 Aldwick Road are lawfully in a B1(a) use class (offices and storage). Furthermore, the National Planning Practice Guidance provides 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. We therefore respectively request that a Certificate of Lawfulness be granted.

July 2020

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