

<b>Application Number</b>	17/1312/CL2PD	<b>Agenda Item</b>	
<b>Date Received</b>	28th July 2017	<b>Officer</b>	Nigel Blazeby
<b>Target Date</b>	22nd September 2017		
<b>Ward</b>	Petersfield		
<b>Site Proposal</b>	Citylife House Sturton Street Cambridge CB1 2QF Application for a Certificate of Lawfulness under section 192 for the proposed use of the building for general educational use falling within Use Class D1 (Non Residential Institutions) as defined by the Town and County Planning (Use Classes) Order 1987 (as amended).		
<b>Applicant</b>	Citylife House Sturton Street Cambridge CB1 2QF		

<p>SUMMARY</p>	<p>A Lawful Development Certificate should be granted for the following reasons:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The site benefits from planning permission for a dance school/studio use under planning permission ref. 14/1252/FUL</li> <li><input type="checkbox"/> The planning permission has been lawfully implemented</li> <li><input type="checkbox"/> There are no restrictions within the planning permission to limit the use to a dance school/studio use only</li> <li><input type="checkbox"/> Both dance school/studio and general educational uses fall within the same Use Class D1</li> <li><input type="checkbox"/> Planning law allows for uses within the same use class to be interchangeable as this is not regarded as development</li> <li><input type="checkbox"/> The dance school/studio use is materially established</li> </ul>
<p>RECOMMENDATION</p>	<p>APPROVAL</p>

## **1.0 SITE DESCRIPTION/AREA CONTEXT**

- 1.1 The site lies adjacent to St Matthew's Piece in the Petersfield area of the city. It is bounded on the east side by York Street, on the north side by New Street, on the west side by Sturton Street, and to the south by the open space of St Matthew's Piece. The areas to the east, south and west of the site are primarily residential, including many small nineteenth-century terraced houses, and small modern houses and flats. The area to the north is a mixed area, which includes light industrial and retail uses as well as dwellings and student accommodation.

## **2.0 THE PROPOSAL**

- 2.1 The application has been submitted under S192 of the Town and Country Planning Act 1990 (the 1990 Act). It is an application for a Certificate of Lawfulness for a proposed use. It is not an application for planning permission. The planning merits of the proposal are not therefore relevant considerations.
- 2.2 S192 allows an applicant to seek to ascertain whether any proposed use of buildings or land would be lawful and does not require any further planning permission. If the Local Planning Authority is provided with information satisfying it that the use would be lawful if it were to have begun at the time of the application, a certificate should be issued.
- 2.3 The application, as submitted, seeks to establish that a general educational use of the building would be lawful if it were to have begun on 28 July 2017 (the application submission date).
- 2.4 The effect of granting a certificate is not to grant a planning permission for the proposed use. In this instance a certificate would confirm that the change from dance school/studio to general educational use would not amount to development, as both uses fall within the same use class, and would therefore recognise that the reference in the description of planning permission 14/1252/FUL to dance school/studio use would not limit the use to a dance school/studio only. All of the conditions contained within the permission would continue to apply so long as they are relevant.

2.5 The application seeks to demonstrate the lawfulness of general educational use by establishing the following:

- The site benefits from planning permission for a dance school/studio use under planning permission ref. 14/1252/FUL
- The planning permission has been lawfully implemented as the pre-commencement conditions have now all been discharged
- There are no restrictions within the planning permission to limit the use to a dance school/studio only
- Both dance school/studio and general educational uses fall within the same Use Class D1
- Planning law provides that movement between uses within the same use class does not amount to development
- The dance school/studio use has been established as a material use

2.6 As stated above, part of the proposal, seeks to establish that planning permission reference 14/1252/FUL has been lawfully implemented. This matter formed one of the reasons for deferment of planning application ref. 15/2372/FUL at the 5 July 2017 planning committee.

### **3.0 RELEVANT SITE HISTORY**

3.1 The site has an extensive planning history. The most relevant history to this application is listed in the below table.

<b>Reference</b>	<b>Description</b>	<b>Outcome</b>
EN/0062/17	Alleged flues on roof of building at the premises without planning permission. Breach of Condition 2 of 14/1252/FUL.	Enforcement Notice served (suspended pending appeal decision)

EN/0061/17	Alleged Breach of Condition 2 14/1252/FUL re: erection of roof plant and paths	Enforcement Notice served (suspended pending appeal decision)
16/1272/S73	Section 73 application to vary condition number 2 of permission 14/1252/FUL to permit revised cycle and bin storage locations, revised internal configurations and revised location of plant from the eastern elevation to the roof.	Refused (appeal in progress)
15/2372/FUL	Change of use from the implemented use as a class D1 dance school/studio (granted under planning permission 14/1252/FUL) to general educational use within use class D1 including limited alterations to the external appearance of the building & associated landscaping works	Pending consideration (deferred at 5 July 2017 planning committee)
14/1252/FUL	Change of use from the permitted use as a studio/cafe bar/multimedia education centre and community facility (sui generis) granted under planning permission 97/1020 to a Class D1 dance school/studio including limited alterations to the external envelope of the building.	Permitted
06/0567/FUL	Erection of a community innovation centre.	Appeal Dismissed

05/1171/FUL	Change of use of land (Howard Mallett Centre) from Sui Generis use to public open space as part of St Matthew's Piece.	Permitted (not implemented)
05/1180/CAC	Demolition of Howard Mallett Centre.	Permitted (not implemented)
C/97/1020	Change of use from a youth club to a broadcasting studio, cafe-bar and multi-media education centre, and community facility (a sui generis use), with external alterations to building, laying out of car park and landscaping.	Permitted

#### **4.0 PUBLICITY**

4.1	Advertisement:	No
	Adjoining Owners:	Yes
	Site Notice Displayed:	No

#### **5.0 POLICY**

5.1 The application seeks a lawful development certificate. The planning merits of the proposal are not relevant to this consideration. The Development Plan, including the Cambridge Local Plan 2006 is similarly not a relevant consideration.

#### **6.0 CONSULTATIONS**

None

#### **7.0 REPRESENTATIONS**

7.1 Councillor Robertson has requested that the application be decided at Planning Committee, recognising that the site has a long planning history and the proposal is extremely contentious.

7.2 There is no requirement in planning law to notify residents of S192 applications. However, in recognition of significant local

concerns regarding previous planning applications, local residents have been notified and comments invited. The owners/occupiers of the following addresses have made representations in objection to the application:

- 6 Edward Street
- 121 York Street
- 106 Gwydir Street
- 80B York Street
- 80 York Street

7.3 An additional representation did not include an address. This cannot be taken into consideration.

7.4 The representations can be summarised as follows:

The application should be refused as in line with the advice of Simon Bird QC, lawful implementation involves two crucial elements: compliance with the full terms of all conditions; and subsequent sustained use only as a dance school/studio. Neither of these crucial elements have occurred.

Any breach of conditions prevents lawful implementation and no reliance can be placed on the Use Classes Order.

The use has effectively been non-existent since April 2017 and the building is essentially unused most of the time. It is operating neither as a dance school nor as a dance studio.

Condition 6 refers to the air conditioning. It seems a logical impossibility for this to be valid and subsequently implementable after discharge when the air conditioning is not as approved. The unauthorised plant facilitates the use and the dance school could not operate otherwise. This is a significant factor when considering the lawfulness of the use. Condition 6 was discharged by officers prematurely.

Condition 11 of planning permission ref. 14/1252/FUL was not been complied with before mid-April when photographic evidence shows the gate only then being correctly installed. No lawful implementation could be considered to have taken place before that time. The gate has been chained for months which does not accord with the parking management plan and

subsequently with condition 11. It has perhaps never been complied with and remains outstanding.

There are flaws in the content and delivery of the travel survey report which breach Condition 12.

The development has grossly deviated from the approved plans. At a fundamental level, there is the principle that if something has been built that is not according to approved plans then it does not implement a consent.

The 2014 consent is not in place. The 1997 permission is the only authorised consent.

Most of the dance school activity takes place at CSVPA's King Street site and not the application site.

The developer pays little attention to the conditions: starting work in violation of pre-conditions; refusing to supply details of its various travel plans and proposed automated barriers; putting down hardstanding paths on Protected Open Space and not removing them when enforcement action is taken; siting the plant on the roof as opposed to its approved position on the ground; providing only timetables months after the event as supposed proof that the building is in fact in use as a dance studio.

- 7.5 Other comments related to the planning merits of the proposal such as how the proposed use conflicts with the Local Plan have not been summarised since these are not relevant to the consideration of the application.
- 7.6 The above representations are a summary of the comments that have been received. Full details of the representations can be inspected on the application file.
- 7.7 Two witness statements submitted with the application were not made available on the Council's website. These are now available and are included as part of appendix 1 of this report. The omission was an oversight and in light of the inclusion of the information within this report and the lack of any legal requirement for consultation to take place it is considered that residents should not be disadvantaged by this.

## 8.0 ASSESSMENT

8.1 I shall assess the application in relation to the proposal as set out above at paragraph 2.5. I consider that each of the six steps set out therein amount to tests where, should each be satisfied, the lawfulness of the proposed use must be confirmed.

### ***1. Planning permission for a dance school/studio use under planning permission ref. 14/1252/FUL***

8.2 Planning permission ref. 14/1252/FUL was granted on 28 October 2015 for:

*Change of use from the permitted use as a studio/café bar/multimedia education centre and community facility (sui generis) granted under planning permission 97/1020 to a Class D1 dance school/studio including limited alterations to the external envelope of the building.*

8.3 The permission remains extant until 28 October 2018.

8.4 I conclude that the site benefits from planning permission for a dance school/studio use.

### ***2. Lawful implementation of planning permission ref. 14/1252/FUL***

8.5 The permission is lawfully implemented where:

- (a) All pre-commencement, pre-use, or pre-occupation conditions which go to the heart of the permission have been discharged in full by the LPA; and
- (b) The use and/or the operational development has commenced.

8.6 In addition to the pre-commencement/use/occupation requirements set out in a number of the conditions, some conditions or parts of conditions are for compliance only and are not required to be discharged by the LPA. Failure to comply with these would not affect consideration of lawful implementation but could result in a breach of condition and potential enforcement action.



- 8.7 The following is an assessment of all of the conditions attached to planning permission ref. 14/1252/FUL having regard to the above.

*Condition 1 - The development hereby permitted shall be begun before the expiration of three years from the date of this permission*

- 8.8 This condition is a compliance condition. It requires no pre-commencement/use/occupation discharge. Evidence of the commencement of the development is attached at Appendix 1.
- 8.9 It is worth noting that the permission contains two elements, the change of use and the physical works (operational development). Commencing either would constitute implementation of the permission as a whole. For example, once all pre-commencement/use/occupation conditions have been discharged, the use could commence prior to any works taking place to the building and this would constitute lawful implementation. Similarly the operational works could begin prior to the use taking place which would also lawfully implement the permission.

*Condition 2 - The development hereby permitted shall be carried out in accordance with the approved plans as listed on this decision notice.*

- 8.10 This condition is a compliance condition. It requires no pre-commencement use/occupation discharge. Where aspects of the operational elements of the proposal have not been erected in accordance with the approved plans, the LPA has discretionary enforcement powers. Currently two breach of condition enforcement notices have been served and enforcement appeals are outstanding in relation to plant, paths, flues and cowls that it is alleged have not been erected in accordance with the approved plans. This is an on-going compliance, rather than a pre-commencement/use/occupation requirement and does not therefore affect consideration of lawful implementation.
- 8.11 As stated above, the permission contains both change of use and operational development elements. Failure to comply with aspects of the operational development matters, that are not pre-commencement in any case, is an on-going compliance

matter that does not in my view affect the ability of the use to be lawfully implemented.

- 8.12 I conclude that failure to comply with Condition 2 is an on-going compliance and enforcement matter that does not have a bearing on consideration of lawful implementation.

*Condition 3 - No development shall commence until details of facilities for the covered, secured parking of bicycles for use in connection with the development hereby permitted shall be submitted to and approved by the local planning authority in writing. The approved facilities shall be provided in accordance with the approved details before use of the development commences.*

- 8.13 This condition was formally discharged in full by letter dated 2 September 2016.

*Condition 4 - Prior to the commencement of development and with reference to BS 5837 2012, details of the specification and position of all protection measures and techniques to be adopted for the protection of any trees from damage during the course of any activity related to the development, shall be submitted to the local planning authority for its written approval in the form of an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP).*

*The approved AMS and TPP will be implemented throughout the development and the agreed means of protection shall be retained on site until all equipment, and surplus materials have been removed from the site. Nothing shall be stored or placed in any area protected in accordance with this condition, and the ground levels within those areas shall not be altered nor shall any excavation be made without the prior written approval of the local planning authority.*

- 8.14 This condition was formally discharged in full by letter dated 16 September 2016. In addition to the submission and approval of the required details, the condition contains matters for compliance that do not affect consideration of lawful implementation.

*Condition 5 - No construction work or demolition work shall be carried out or plant operated other than between the following*

*hours: 0800 hours and 1800 hours on Monday to Friday, 0800 hours and 1300 hours on Saturday and at no time on Sundays, Bank or Public Holidays.*

- 8.15 This condition is a compliance condition. It requires no pre-commencement/use/occupation discharge.

*Condition 6 - Before the development/use hereby permitted is occupied, a scheme for the insulation of the plant in order to minimise the level of noise emanating from the plant shall be submitted to and approved in writing by the local planning authority. The scheme as approved shall be fully implemented before the use hereby permitted is commenced.*

- 8.16 This condition was formally discharged in full by letter dated 2 September 2016.

*Condition 7 - Noise limiting devices (specification and design to be agreed with the LPA) shall be fitted within the studios so that all amplified music is channeled through the devices. The maximum noise levels will be set by agreement with the LPA and will be reviewed from time to time as appropriate.*

*The Premises Management and/or nominated person shall ensure that the noise limiting device is sealed after commissioning, so that sound operators cannot override the system during any performance or class and that the agreed settings are kept unless otherwise agreed in writing by the LPA.*

*The use hereby approved shall be carried out in accordance with the approved specifications and details.*

- 8.17 This condition was formally discharged by letter dated 23 March 2017. The condition contains matters for compliance that do not affect consideration of lawful implementation.

*Condition 8 - During performances, practices or classes all doors and windows in the studios being used must be kept closed at all times.*

- 8.18 This condition is a compliance condition. It requires no pre-commencement/use/occupation discharge.

*Condition 9 - The premises shall only be used for performances, practice sessions and dance classes between the hours of 08.00 and 22.00 Monday to Saturday and between 10.00 and 21.00 on Sundays.*

- 8.19 This condition is a compliance condition. It requires no pre-commencement/use/occupation discharge.

*Condition 10 - Prior the commencement of the use hereby permitted full details of waste storage and collection arrangements shall be submitted to and approved in writing by the local planning authority. The agreed arrangements shall be maintained permanently thereafter.*

- 8.20 This condition was formally discharged by letter dated 2 September 2016. The condition contains matters for compliance that do not affect consideration of lawful implementation.

*Condition 11 - Prior to the commencement of the use hereby permitted, a parking management plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include details of how the parking for the proposed use is managed on site. The existing car park shall not be used other than by the use hereby permitted. The car parking arrangements for the approved use shall thereafter be carried out in accordance with the approved management plan.*

*Thereafter, any proposal to replace the approved system of parking shall be submitted to and approved by the local planning authority before the approved system is discontinued and the replacement is introduced.*

- 8.21 This condition was formally discharged by letter dated 4 November 2016. Representations received suggest that the parking management plan is not being complied with and that the current use is therefore in breach of this condition. The applicants have stated that the automatic gate entry system had been damaged necessitating the need to chain the gate and that it is now repaired. Notwithstanding that there appear to have been periods when a technical breach may have occurred this is a compliance matter that does not affect consideration of lawful implementation.

*Condition 12 - No development shall take place until a Travel Plan for the Bodywork use has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be focused on encouraging sustainable modes of transports for its students, staff and visitors. The approved plan shall be implemented and monitored according to the provisions approved by the local planning authority.*

8.22 This condition was formally discharged by letter dated 2 December 2016. The remainder of the condition is for compliance once the use has commenced and requires no pre-commencement/use/occupation action. A Travel Plan monitoring report was submitted on 19 May 2017. Representations received suggest that the information contained within the report was inadequate and in breach of the requirements of the condition. It is understood that the information that was missing was excluded as it related to the collection of data that was not relevant to provide at the time. Taking the merits of this allegation aside, any potential technical breaches of the condition is a compliance matter that does not affect consideration of lawful implementation.

8.23 The use commenced on 20 February 2017 but at that time not all of the conditions had been discharged. It was not until 23 March when all of the conditions were discharged and the implementation was lawful.

### ***3. Extent to which the planning permission description limits the use to dance school/studio only***

8.24 Case law indicates that unless a planning condition expressly limits a development to the specific use described then any other use within the same Use Class is not prevented. *Wilson v. West Sussex CC* [1963] 2 Q.B. 764 – “an agricultural cottage” and *East Suffolk CC v. SSE* (1972) 70 L.G.R. 803 - “a detached bungalow or house for occupation by an agricultural worker”) established that the *initial* use of a development is limited by the description of that development, but from the above cases, such a description could not prevent the subsequent use of the property for some other purpose within the same Use Class. It was subsequently confirmed that in the absence of an express condition attached to the permission, this does not prevent a different use being implemented at a later date, provided it does not amount to a material change of use. (*I'm Your Man Ltd v.*

SSE [1998] P.L.C.R. 107, also *Uttlesford DC -v- SSE* (1989) JPL 685).

- 8.25 Planning permission ref. 14/1252/FUL contains no planning condition restricting the use to a dance school/studio only and it follows that the permission does not prevent any subsequent use from taking place within the same Use Class.
- 8.26 I therefore conclude that the planning permission does not contain any restriction limiting the approved use to a dance school/studio use only.

***4. Both dance school/studio and general educational uses fall within the same Use Class D1***

- 8.27 The following is an extract from the Town and Country Planning (Use Classes) Order 1987 (as amended) setting out the uses that are contained within Use Class D1:

**Class D1. Non-residential institutions**

Any use not including a residential use —

- (a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner,
- (b) as a crèche, day nursery or day centre,
- (c) for the provision of education,
- (d) for the display of works of art (otherwise than for sale or hire),
- (e) as a museum,
- (f) as a public library or public reading room,
- (g) as a public hall or exhibition hall,
- (h) for, or in connection with, public worship or religious instruction,
- (i) as a law court.

- 8.28 I conclude that a dance school/studio and general educational use both fall within the same Use Class D1

**5. Planning law states that changes of use within the same use class is not development**

- 8.29 The Town and Country Planning Act 1990 Paragraph 55(2) states (in part)

*The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—*

*(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.*

- 8.30 The Town and Country Planning (Use Classes) Order 1987 (as amended) Article 3 states (in part):

*3(1) Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land.*

- 8.31 Having regard to the 1990 Act and the Use Classes Order, I conclude that a change from dance school/studio use to general educational use being within the same D1 Use Class, would not constitute development and is therefore beyond the scope of planning control in this regard.

**6. The dance school/studio use has been established**

- 8.32 It is not sufficient for the planning permission for the dance school/studio use merely to be implemented before reliance can be placed on the Use Classes Order to change to another D1 use. Its first use as a dance school/studio has to have been material and this needs to be judged as a matter of fact and degree.

- 8.33 The applicants have sought Counsel's advice in this regard from Simon Bird QC. The full advice has been made publically available and is attached as appendix 2. Paragraph 25 of this advice indicates that the dance school/studio use would have to

be a material first use which he states as a very general rule of thumb would need to be no less than 10% of the floorspace of the building, provided no other use was made of the premises, and the use would have to have been sustained over a period of months rather than days. I agree with this assessment.

8.34 Attached at appendix 1 is evidence of the material use of the building as a dance school/studio. There are two witness statements setting out how the building has been used for dance purposes which include timetables of activities. In addition there are a number of, photographs, student statements and artistic company statements and timetables showing in particular how the building has been used since April 2017 addressing the point that the controlled entry system was not in place until this time.

8.35 The submitted evidence indicates to me that the use of the building significantly exceeds any token use and demonstrates that the building has been in material use for dance classes and studio activity for some months. I consider that any breaks in the use are consistent with an educational use e.g. term times, such that I do not consider it necessary for the applicants to demonstrate that there have been no breaks in activity whatsoever.

8.36 On balance, I consider, the evidence indicates, to my satisfaction, that the use commenced on 20 February 2017 and was on-going up until at least the date of the application, 28 July 2017, taking into account the term time nature of the use. The burden of proof on the applicants is not to demonstrate this 'beyond doubt' and the LPA should not seek to establish this. I understand that Members of the Planning Committee have also visited the premises and witnessed the use in operation for themselves. In my opinion, the variety and extent of the evidence submitted indicates that the use has been established and amounts to a material first use as a dance school/studio.

### **Third Party Representations**

8.37 Representations refer to alleged breaches of the planning permission ref. 14/1252/FUL and failure to comply with conditions, in particular conditions 11 and 12. They state that the gates were not installed before April 2017 and no implementation can have lawfully taken place before this date.



They state that the permission deviates from that approved significantly and again lawful implementation cannot therefore have taken place. They also state that the building has not been in sustained use.

8.38 The starting point for many of the representations is a reference to the advice of Simon Bird QC (attached as appendix 2) and in particular paragraph 24 of that advice where it suggests that the initial use is lawful only once the full terms of all of the conditions have been complied with.

8.39 This advice would appear to conflict with the arguments that I have set out in this report and in particular those at paragraph 8.5. In relation to this advice I have asked the applicants to seek clarification from Simon Bird QC in relation to the meaning of paragraph 24. Simon Bird QC has responded as follows:

*“You have asked for clarification of my advice of 22 August 2016.*

*Paragraphs 20 to 26 of that advice are to be read together. Where paragraph 24 refers to “all conditions” it means all negatively expressed pre-commencement conditions which go to the root of the permission and not all of the conditions attached to the permission. Where a use has been lawfully implemented, the breach of other conditions do not prevent reliance on the Use Classes Order.”*

8.40 I consider it regrettable that paragraph 24 has been open to a different interpretation but consider that there is no conflict with this advice and the arguments set out in the report. The advice confirms that any breach of compliance conditions does not affect consideration of lawful implementation or reliance on the Use Classes Order. I agree with this assessment.

8.41 In relation to concerns expressed in the representations regarding alleged breaches of planning control and failure to comply with conditions, it is important to note that the effect of issuing a lawful development certificate for the proposed general educational use is to confirm the lawfulness of this type of use were it to have taken place on 28 July 2017 and not to confirm that if it had taken place on 28 July 2017 it would necessarily be operating lawfully. As stated above the conditions attached to the planning permission would continue

to apply to a general educational use, so long as they are relevant, and any breaches of them could be subject to enforcement action. In this regard the allegations made regarding breaches of the planning permission will continue to be considered in relation to any general educational use and where unacceptable harm is identified they will be subject to enforcement action.

8.42 The applicant's maintain that other than condition 2 they consider that all conditions are complied with. They accept that due to damage to the controlled entry system on the gates a chain has been erected as a temporary measure but state this has now been corrected. Regardless of the situation in relation to compliance with conditions, for the reasons given in the report, I consider this is not material to the consideration of the lawfulness of the proposed use.

8.43 I note the concerns from residents regarding the manner in which some conditions have been discharged. I have not assessed this within the report since it is a fact that conditions, 3, 4, 6, 7, 10, 11 and 12 have all been discharged in full and I do not consider the circumstances in which this has occurred to be material to the consideration of the lawfulness of the proposed use.

## **9.0 CONCLUSION**

9.1 I conclude that a planning permission exists for the dance school/studio use and that this use has been lawfully implemented. There are no restrictions within the permission for a change to any other D1 use and both the dance school/studio and general educational uses fall within the same D1 Use Class. Planning law indicates that a change of use within the same Use Class does not constitute development and it is therefore beyond the scope of planning control. The dance school/studio use has to have been a material first use which is a matter of fact and degree. I consider the evidence indicates a material dance school/studio use has been evident since it opened on 20 February 2017 until at least the date of submission of the lawful development certificate application, 28 July 2017. I consider that lawful implementation did not occur until 23 March 2017, but again, a dance school/studio use has been a material use for 4 months following this. The applicant does not have to prove this beyond doubt and I consider the

body of evidence to be sufficient to demonstrate a material use has taken place for a number of months. As such I consider the proposal for general educational use to be lawful.

## **10.0 RECOMMENDATION**

**APPROVE** the granting of a Lawful Development Certificate for proposed general educational use.