

LDC (Proposed) Report		Application number	2023/0041/P
Officer		Expiry date	
Tony Young		02/03/2023	
Application Address		Authorised Officer Signature	
Unit 1 Chichester Rents London WC2A 1EG			
Conservation Area		Article 4	
Bloomsbury		Yes (basements; E to C3 CAZ KQ)	
Proposal			
Use of basement and ground floors as offices (Class E).			
Recommendation:		Grant lawful development certificate	

1. Introduction

- 1.1. The application seeks confirmation that the proposed use of existing basement and ground floor areas (Unit 1) as offices does not constitute development and is lawful such that planning permission would not be required.
- 1.2. Section 192 of the Town and Country Planning Act 1990 (“the 1990 Act”) provides for an application to determine whether any proposed use would be lawful for planning purposes. This application is for a determination of fact, and not one of planning merits.

2. Applicants Evidence

- 2.1. The applicant provided the following documents/drawings in support of the proposal:
 - Site location plan (ref. SLP01)
 - Basement and ground floor plans drawing (ref. T17108 - 1108 rev E)
 - Covering Letter from DWD Property & Planning dated 05/01/2023
 - Acoustic Assessment from KP Acoustics Ltd. (ref. 15874.PPCR.01) dated 03/05/2017
 - Acoustic Assessment from KP Acoustics Ltd. (ref. 15874.ADR.02) dated 11/08/2017
 - Final Certificate (NHBC Building Control Service Ltd.) ref. 01585/2017/HO dated 10/08/2018
- 2.2. The application submission highlights the following planning history for the site:

2013/2159/P (79-86 Chancery Lane) - Redevelopment of building to provide reconfigured office floorspace (Class B1) and the creation of a new office reception at ground floor level, replacement of mansard roof at fifth floor level, infill extension from first to fourth floor level, reconfigured residential floorspace (Class C3) to provide five new apartments (2 x 1 bed and 3 x 2 bed) at first floor level, together with reconfiguration of existing retail arrangement along Chichester Rents and Chancery Lane, and the creation of a new pedestrian route

from Bishop's Court. Planning permission granted subject to a Section 106 legal agreement dated 10/09/2013

2014/3363/P (79-86 Chancery Lane) - Alterations to windows and doors, roof materials on southern elevation and bin store layout, omission of 7 fins along Chichester Rents and retention of shopfronts in refurbishment and extension of office floorspace, re-provision of 5 flats, reconfiguration of retail units and new pedestrian route approved under planning permission 2013/2159/P dated 10/09/2013. Granted 05/06/2014

2014/5909/P (79-86 Chancery Lane) - Variation of condition 3 (approved plans) of planning permission ref 2013/2159/P dated 10/09/2013 (as amended by 2014/3363/P) for redevelopment of building to provide reconfigured office space, commercial units and residential accommodation, namely change of use of unit 1 at basement and ground floor level from A1 use class (retail) to flexible retail/food and drink (Class A1 or A3) and associated alterations to the basement layout. Variation granted subject to a Section 106 legal agreement dated 24/02/2015

2015/2613/P (79-86 Chancery Lane) - Variation of Condition 3 (approved plans) of planning permission 2013/2159/P dated 10/09/13 (as amended by 2014/5909/P and 2014/7308/P) (for redevelopment of building to provide reconfigured office space, commercial units and residential accommodation (including 5 new flats); replacement of mansard roof at fifth floor level; infill extension from first to fourth floor level and the creation of a new pedestrian route from Bishop's Court) to include a new flue on the roof of the building. Variation granted subject to a Section 106 legal agreement dated 07/10/2015

2017/2702/P (1 Chichester Rents) - Change of use of ground floor and basement unit from A1/A3 to flexible A1/A3/D2 use to building. Planning permission granted subject to a Section 106 legal agreement dated 25/07/2017

3. The last lawful use

- 3.1. Establishing the current lawful use of the relevant part of the application site (Unit 1) is the starting point, as use rights for a proposed use stem from the current lawful use.
- 3.2. Based on the above planning history, the application submission indicates the following as evidence of the last lawful use:
 - Following the grant of planning permission on 10/09/2013 (2013/2159/P) for the redevelopment of 79-86 Chancery Lane, including the reconfiguration of existing retail arrangement along Chichester Rents and Chancery Lane, the application site (Unit 1) comprised an area over 2 floors (basement and ground floors) with the use restricted at the time to retail (Class A1).
 - Approval was subsequently granted on 24/02/2015 (2014/5909/P) to vary condition 3 of planning permission (2013/2159/P and as amended by 2014/3363/P), so as to allow a change of use of Unit 1 at basement and ground floor level from retail (Class A1) to a flexible retail/food and drink use (Class A1 or A3) with associated alterations to the basement layout.
 - Planning permission was granted on 25/07/2017 (2017/2702/P) to allow a change of use from a flexible retail/food and drink use (Class A1 or A3) to a

flexible use (Classes A1/A3/D2) to allow retail/food & drink/assembly & leisure use.

- Following this permission, the applicant confirms that Unit 1 was occupied for the first time in early 2018 as a gym (Class D2), following commencement of the lease on 12/09/2017. The applicant, therefore, asserts that this was the last lawful use of Unit 1.

4. Assessment

- 4.1. Section 57 of the 1990 Town and Country Planning Act (the Act) states planning permission is required for the carrying out of any development of land. Development is defined by Section 55 of the Act as including ‘... *the making of any material change in the use of any buildings or other land*’.
- 4.2. However, s.55(2) sets out operations or uses of land that are not taken to involve development. This includes, at paragraph (f), changes of use between uses within the same use class. Therefore, movement from one primary use to another within the same use class is not considered to constitute development and does not require planning permission.
- 4.3. The relevant Order is the Town and Country Planning (Use Classes) Order 1987 (as amended). Use Class E of the Order was introduced on 01/09/2020 and covers a number of former use classes, including A1 (shops), A3 (restaurants and cafes), B1 (offices) and D2 (assembly and leisure). Use Class E is broad and covers commercial, business and service uses. These include:
 - *E(a) Display or retail sale of goods, other than hot food, principally to visiting members of the public;*
 - *E(b) Sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises;*
 - *E(d) Indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public; and*
 - *E(i) An office to carry out any operational or administrative functions*
- 4.4. The application site (Unit 1) was granted permission (2017/2702/P) for a flexible use (Classes A1/A3/D2) to allow retail/food and drink/assembly & leisure use. These Use Classes are now classified under Use Class E.
- 4.5. The proposed use as offices also falls within Use Class E, under paragraph (i). As such, the proposed change of use would be for a purpose falling within the same use class, and as such, would not constitute ‘development’ as defined by Section 55 of the Act.
- 4.6. However, notwithstanding this, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 do not override any existing planning conditions or obligations which might specifically prohibit a new use.
- 4.7. In this regard, it is noted that there are 2 conditions attached to the planning permission (2017/2702/P – conditions 4 and 5) which are required to be discharged prior to use or commencement of the development as a gym. These include the requirement to carry out a post-installation noise assessment and to

undertake sound insulation measures; details of both to then be submitted to and approved in writing by the Council. These conditions have yet to be discharged in accordance with the relevant wording which requires compliance prior to use or commencement of the development as a gym. This therefore brings into question whether the permission has been lawfully implemented or not, and as such, whether the last use of Unit 1 as a gym was lawful or not.

- 4.8. This is particularly important to establish given that Unit 1 had previously remained vacant since the redevelopment works of the wider site (79-86 Chancery Lane) were carried out following the granting of planning permission (2013/2159/P) in 2013. As such, the applicant confirms that Unit 1 had not actively been used as either Class A1 or A3. Prior to this, planning records in 2013 suggest that the relevant basement and ground floor areas were divided at the time into a number of separate uses (namely, a combination of retail, offices, residential, workshops and ancillary/shared circulation) which would unlikely now all be classified together under the newer Use Class E.

Additional evidence

- 4.9. The applicant was therefore offered an opportunity to provide any additional evidence that might address the matter in support of the application proposal. In response, the applicant provided some additional information. This included 2 additional Acoustic Assessments from KP Acoustics Limited. The 1st report (ref. 15874.PPCR.01) dated 03/05/2017 provides an account of a preliminary planning compliance review undertaken to advise Urban Fitness London Group Ltd. on the feasibility of plant installation and necessary mitigation measures to satisfy noise emissions criterion in compliance with the approved scheme.
- 4.10. The 2nd report (ref. 15874.ADR.02) dated 11/08/2017 provides a subsequent account of further noise measurements as part of a sound insulation investigation between the proposed basement and ground floor gym space at Unit 1 and the office spaces directly above the proposed gym space.
- 4.11. A Final Certificate from NHBC Building Control Service Ltd. (ref. 01585/2017/HO) dated 10/08/2018 was also provided by the applicant as evidence and confirmation of the completion of works to fit out Unit 1 as a gym space.
- 4.12. While the information provided is not considered likely to be sufficient to fully discharge both outstanding planning conditions, it does provide additional information which demonstrates noise measures taken to fit-out the relevant ground floor and basement areas with the clear intention of allowing a gym to occupy and operate within Unit 1 in compliance with the acoustic requirements as set out by the planning approval (2017/2702/P).
- 4.13. Furthermore, it is noted from a review of relevant Planning Enforcement history that there is no record of complaints in regard to noise emanating from Unit 1 since 2018 when the basement and ground floor have been used as a gym.
- 4.14. Therefore, notwithstanding that planning conditions 4 and 5 have not been discharged, it is not considered in itself to render the commencement of development in 2018 as a gym unlawful in this instance based on the evidence provided and taking into account all the available planning history. Under these

circumstances, there would not appear to be any restrictions on the normal operation of the Use Classes Order.

- 4.15. This being the case, on the balance of probabilities, the lawful existing use of the application site (Unit 1) is as a gym, formerly in Class D2. This use now falls within Use Class E and is specified under paragraph (d) of the class. The proposed use as offices would also fall within Class E, formerly in Class B1, and is specified under paragraph (i) of the class. As the existing use and the proposed use are classified within the same Use Class, Section 55(2)(f) of the Town and Country Planning Act 1990 is applicable in this instance.

5. Conclusion

- 5.1. The proposal would, therefore, not result in a material change of use, nor fall within the 'meaning of development' which would require planning permission, as defined by section 55 of the Act.
- 5.2. The proposal is therefore lawful and it is recommended that a certificate of lawfulness be granted.

6. Recommendation

- 6.1. Grant Lawful Development Certificate