

LDC Report		14/06/2023	
Officer		Application Number	
Edward Hodgson		2023/1686/P	
Application Address		Recommendation	
Ground and Basement Floors 12 - 16 Fitzroy Street London W1T 4BL			
1st Signature		2nd Signature (if refusal)	
Proposal			
Use of lower ground and ground floors as Class E use			

Application site

12 to 16 Fitzroy Street is an eight-storey property located on Fitzroy Street and is in residential use on the upper floors and commercial use on the lower floors. It is neither listed nor located within a conservation area.

Relevant planning history

2012/1801/P - Installation of 8 wall-mounted air conditioning units (7 retrospective and 1 new) behind acoustic screen enclosure at first floor level and new louvred metal door at ground floor level on elevation facing the service yard all in connection with the existing office building (Class B1). **Granted - 25/06/2012**

2017/5598/P - Erection of projecting canopy to the front elevation with vertical panel and internally illuminated lettering. Erection of projecting glazed bay at ground floor level. **Granted - 02/12/2017**

N12/10/C/10361 - Change of use of ground floor of 12-16 Fitzroy Street, Camden, from shop/showroom to offices. **Refused - 11/03/1971**

Reasons for refusal:

- 1) *The proposal does not accord with the Initial Development Plan which zones the area for West End purposes*
- 2) *The proposal is contrary to the Council's policy for the restriction of growth of offices in the Central Area as set out in the Written Statement to the Initial Development Plan.*

Assessment

This application seeks a Certificate of Lawfulness (Existing) for the use of the ground and lower ground floors of the building as office space (Class E).

The applicant is required to demonstrate that the existing use of the land is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990. For the purposes of the 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.*

The applicant is required to demonstrate, on balance of probability that the existing office use has existed for a period of 10 or more years.

Applicant's Evidence

The applicant has submitted the following information in support of the application:

- Site Location Plan at 1:2500
- Cover letter, dated 05/04/2023, outlining the recent business operations
- Letting History from 2011 to present (in cover letter)
- Live Valuation Report, dated 05/08/2011
- Photographic Evidence from 2008 to 2019
- Decision Notice for application 2017/5598/P dated 02/12/2017.
- Design and Access Statement for application 2012/1801/P.

The cover letter states that the ground and lower ground floors were in use as office space in 2012, as demonstrated in the design and access statement as part of the submission of the application ref. 2012/1801/P which was approved on 25/06/2012. The cover letter also provides a letting history stating the space has been in use as offices from 2011 to present. A Live Valuation Report from 05/08/2011 states that both the basement and ground floors were used as office space in 2011. In addition, photographic evidence suggests that the ground floor was in use as an office space between 2008 to 2019.

Council's Evidence

There is no recent planning history or enforcement action at the application site. The Council does not have any evidence to contradict the evidence provided by the applicant.

Assessment

A certificate of lawfulness for an existing use has been submitted to establish whether the use of the lower ground and ground floor commercial, business and service use (Class E), is lawful.

The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the "balance of probability", and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, 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. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

The certificate relates to the lower ground and ground floor levels of the building. These floors appear to have been in use as an office space for a period of more than 10 years.

The Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability', the lower ground and ground floor levels have existed in office use (Class E) for a period of more than 10 years as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

Recommendation: Grant Certificate