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Our reference: RE/CSL324

Camden Council
Planning - Development Control,
Camden Town Hall,
London,
WC1H 8ND

2 November 2023

Dear Sir/madam

**APPLICATION FOR CERTIFICATE OF LAWFUL EXISTING USE CLASS E
79 REGENT'S PARK ROAD, LONDON NW1 8UY**

Introduction

CarneySweeney has been instructed by EL Retail No.2 Ltd to submit an application for a Certificate of Lawfulness (CLEUD) to establish that the use of 79 Regent's Park Road, London NW1 8UY is within class E under Section 191 (1)(a) of the Town and Country Planning Act 1990 (as amended).

This application is made pursuant to Section 191(1)(a). This legislation states that if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application to the Local Planning Authority for a Certificate of Lawfulness for the purpose, specifying the land and describing the use, operations or other matter. If the Local Planning Authority is then satisfied with the information provided by the applicant to demonstrate that the use, operations or other matters in the application are as described then it shall issue a 'certificate' to that effect.

This document sets out in further detail the grounds on which this Certificate is sought and provides evidence to demonstrate that the works undertaken at the Site in question are lawful.

The application is submitted via the Planning Portal, reference PP-12575563, and the application fee of £462 being the correct fee, is paid directly by the applicant.

Site Location

The site comprises a single commercial unit comprising of an estate agents, occupied by Savills. It is located on the west side of Regent's Park Road in Primrose Hill. The commercial unit, the subject of this application, occupies the ground floor of a 3-storey mid-terrace property.



The Existing Use

The site has been occupied as an estate agent since February 2016 and before that by a café (former A3 use).

The lawful use of the site as an estate agents which is within Class E following its introduction by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, 2020 S.I. No 757 Schedule 2, Part A.

Evidence

In support of this certificate of lawful use and to assist the Council in their determination of this certificate, the applicant has provided the following evidence:

- Site Location Plan P110 A
- Existing Ground Floor Plan P111 A
- Interior Photograph, dated 7 August 2023
- Application Reference 2013/4055/P decision notice, dated 22 November 2013
- Lease dated 22 February 2016
- Street View images from July 2008 to August 2022
- Brecher Advice Letter, dated 3rd March 2023

Drawing numbers P110 A (Site Location Plan) and P111 A (Existing Ground Floor Plan) identify the site of this application.

The submitted evidence demonstrates that the use of the site is lawful and has been as a shop unit, formerly a café and subsequently an estate agent up until the present day. A photograph of the ground floor interior, dated 7 August 2023, demonstrates its current use as an estate agent.

Up until Savills took occupation of the site in February 2016 the previous use was occupied by as a café. A Certificate of Existing Use or Development (CLEUD), application reference 2013/4055/P decision notice, dated 22 November 2013 for: 'Continued use of the ground floor as cafe (Class A3)' is enclosed. This was granted and demonstrates the lawful use of the site at that time to be a café.

The use was subsequently changed to an estate agent, formerly Café Seventy Nine, former use class A2. Such a change in use was permitted development in accordance with The Town and Country Planning (Use Classes) Order 1987 at the time.

A tenant's lease for Savills, dated, 22 February 2016 is enclosed which covers their occupancy period to date. The lease lists Savills as the tenants (LR.3). Under the **Agreed Terms; 1. Interpretation; 1.1 Definitions**, the **Permitted Use** is given as "*use within Use Class A2 of the Town and Country Planning (Use Classes) Order 1987 as at the date this lease is granted.*" Furthermore **31. Use ; 31.2** states "*The Tenant may use the Property for another use within Use Class A 1 of the Town and Country Planning (Use Classes) Order 1987 (as at the date of this lease) with the consent of the Landlord, such consent not to be unreasonably withheld or delayed.*"



Street view images from July 2008 onwards show the commercial occupier and use of the site as follows:

Date	Occupier	Use
July 2008	Café Seventy Nine	Café
June 2012	Café Seventy Nine	Café
June 2014	Café Seventy Nine	Café
July 2016	Savills	Estate agent
June 2017	Savills	Estate agent
March 2018	Savills	Estate agent
July 2019	Savills	Estate agent
January 2021	Savills	Estate agent
August 2022	Savills	Estate agent

Brecher Class E Advice Letter, dated 3 March 2023, states that: *“From 1 September 2020 if a building is being lawfully used for Class A1, A2, A3 or B1 purposes it is to be treated (for UCO purposes) as being used for a Class E use (see Regulation 7 of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2020).”*

In addition to the above, Brecher’s letter states: *“Section 55(2)(f) of the Town and Country Planning Act 1990 (“the Act”) provides that a change of use of a building or other land does not involve development for the purpose of the Act if the new use and the former use are within the same specified class.”*

Relevant Legislation and Policy Guidance

Section 191(1) of the Town and Country Planning Act 1990 (as amended) entitles any person wishing 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.

Schedule 2, Part B of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 states:

Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes-

- (a) *For the display or retail sale of goods, other than hot food, principally to visiting members of the public,*



- (b) *For the 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,*
- (c) *For the provision of the following kinds of services principally to visiting members of the public-*
 - (i) *Financial services,*
 - (ii) *Professional services (other than health or medical services), or*
 - (iii) *Any other services which it is appropriate to provide in a commercial, business or service locality,*
- (d) *For indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,*
- (e) *For the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,*
- (f) *For a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,*
- (g) *For-*
 - (i) *An office to carry out any operational or administrative functions,*
 - (ii) *The research and development products or processes, or*
 - (iii) *Any industrial process,*
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."

Regulation 7 of The Town and Country Planning (Use Classes) (Amendment) (England) Order 2020 states that if a building was being lawfully used for Class A1, A2, A3 or B1 purposes as of 1 September 2020 it is to be treated (for Use Classes Order purposes) as being used for a Class E use thereafter.

National Planning Policy Guidance

The Lawful Development section of the NPPG identifies that an application should include a precise description of what is being applied for (not simply the use class) and the land to which the application relates. A CLUED must include a description of the use, operations or matter for which it is granted regardless of whether the matters fall within a specific use class and where it is within a use class of the 1987 Order, a Certificate must also specify the relevant the use class.

Paragraph 006 Reference ID: 17c-006-20140306 of the Planning Practice Guidance states that:

"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 counterevidence. 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."

Paragraph 009 Reference ID: 17c-009-20140306:



"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process."

Summary of Lawfulness and Conclusions

The evidence submitted within this application demonstrates that the existing lawful use is deemed to be within Use Class E in accordance with The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

The evidence submitted comprises a photograph dated 7 August 2023 to show the current use of the site as an estate agent; a Certificate of Lawfulness dated 22 November 2013 for the use of the site as a café (former class A2 use); a lease with the current occupier dated 22 February 2016 demonstrating their continued tenancy at the site, with reference to restrictive clauses that the permitted use shall only be as either former class A1 or class A2 uses; Street view images from July 2008 to August 2022 showing occupation during this period first by Café Seventy Nine (café use) till Savills (estate agent use) occupancy from 2016 onwards.

A legal advice letter from Brecher LLP dated 03 March 2023 confirms that former A2 and A3 uses both fall within Class E and that changes of use within a Class are considered to be legally compliant.

It is therefore respectfully requested that a Certificate of Lawfulness for an Existing Use or Development is granted under Section 191 of the Town and Country Planning Act 1990 (as amended).

We look forward to receiving your registration and validation of this submission at your earliest convenience. In the meantime, should you have any queries, please do not hesitate to contact me direct.

Yours faithfully



Richard Evans
Director
CarneySweeney

Enc.

