

<b>LDC (Existing) Report</b>		<b>Application number</b>	2023/4758/P
<b>Officer</b>		<b>Expiry date</b>	
Tony Young		02/01/2024	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
81 Regent's Park Road London NW1 8UY			
<b>Conservation Area</b>		<b>Article 4</b>	
Highgate		Yes (basements)	
<b>Proposal</b>			
Use of ground floor as dry cleaners (Class E).			
<b>Recommendation:</b>		<b>Grant Certificate of Lawfulness</b>	

### Introduction

The application site comprises a 3-storey, mid-terrace property located on the north-west side of Regent's Park Road. A single unit at ground floor level, the subject of this application, is currently occupied by a dry cleaners (American Dry Cleaning Company), while the upper floors are in residential use.

The building is not listed and is situated within the Primrose Hill Conservation Area.

The application seeks to demonstrate that, on the balance of probability, the use of the ground floor for purposes falling within commercial, business and service use (Class E) began at least ten years before the date of this application, such that a retention of the current use as a dry cleaners would not require planning permission.

### Applicant's Evidence

The applicant asserts that the use of the ground floor of the site (as shown on drawing ref. P121 revision A) has been in use as a shop unit (former Class A1 use) in excess of the requisite ten year period - currently operating as a dry cleaner since 2016, and before that selling art and pictures since at least July 2008, with a period of vacancy in between.

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

- Cover letter from Carney Sweeney (agents) ref. RE/CSL324 dated 02/11/2023, asserting that the application site has been occupied as a dry cleaners (former Class A1 use) and before that as a gallery (former Class A1 use) for a combined period of over 10 years before the date of the current planning application. The following evidence is referred to in support of the assertion:
- Photograph dated 07/08/2023, asserted as showing the ground floor interior of the premises in use as a dry cleaners;
- Decision notice (2014/3444/P) granted 05/09/2014, referring to approved alterations to the shopfront at ground floor level to extend existing Class A1 and A3 uses at nos. 79-81;

- Lease document (between 79/81 Regents Park Road Ltd. and J.F. Stone Investments Ltd. trading as American Dry Cleaning Company) dated 16/12/2016, listing J.F. Stone Investments Ltd. as the tenant of the ground floor premises at the application site for a period of 10 years from the date of the lease and ending on 15/12/2026. Additionally, the lease states that only retail activities falling within (former) Use Class A1 may be carried out at the site;
- Street View images from July 2008 to August 2022, showing the commercial occupiers of the application site during that period;
- Letter from Brecher LLP (ref. WZF/E186-1) dated 03/03/2023, providing commercial, business and service advice to Essential Living Management Ltd. in regard to the introduction of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2020 and the establishment of Use Class E;

The applicant has also submitted the following drawings:

- Site location plan (ref. P120 A) showing the boundary of the site outlined in red;
- Existing ground floor plan (ref. P121 A).

## **Council's Evidence**

### Planning history:

There is the following planning history relevant to the subject site:

- 2014/3444/P (nos. 79-81) - Erection of roof extension, glazed roof structure over rear courtyards, alteration to windows at rear, and alterations to shopfront to extend existing A1 and A3 retail uses at ground floor and create 3x residential flats (C3) at upper floor levels. Granted planning permission subject to a Section 106 legal agreement dated 05/09/2014

There is no enforcement history for the subject site.

### Business rates:

- Valuation at the subject site is effective from 01/04/2017 to the present time. The site is described as '*Shop and premises*' (Local Council reference: 00622008100001).

### Retail surveys:

- Information provided from Council Retail Surveys dated between 2008 and 2022 indicate that the ground floor of the application site has been in Class A1 (retail use) during the relevant period.

### Council tax:

- Valuation for band F property (Flat 1) effective 08/09/2016 (Local authority reference number: 5187288);
- Valuation for band D property (Flat 2) effective 05/08/2016 (Local authority reference number: 5187300); and
- Valuation for band D property (Flat 3) effective 15/08/2016 (Local authority reference number: 5187301).

## **Assessment**

In regard to applications for a Certificate of Lawfulness, 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 (National Planning Practice guidance). The relevant

test is the '*balance of probability*', and authorities are advised that if they have no evidence of their own, nor any from others, to contradict or otherwise make the applicant's version of events less probable, 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.

Section 57 of the Town and Country Planning Act 1990 ("the Act") states that 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*'.

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.

The applicant's evidence asserts that Primrose Hill Gallery was previously in use as an art gallery, selling pictures and art, where retail sales were the main use. The applicant's evidence also indicates that the current occupiers of the ground floor unit, American Dry Cleaning Company, use and operate the unit for the sale of services for the collection and dropping off of goods for dry cleaning laundering and tailoring, including ancillary shoe repairs, key cuttings and sale of ancillary items. As such, the evidence submitted points to both previous and current operations at the site as having a strong retail character consistent with former Use Class A1.

The Council's Retail Surveys indicate that the ground floor unit at the application site was in use consistent with a former Use Class A1 retail unit from 2008 to the present (with a period of vacancy between approximately 2013-16). A decision notice and Section 106 legal agreement, granted planning permission on 05/09/2014, also both refer to an existing Class A1 retail use at ground floor level at the time. Additionally, independent photographic evidence from Google Maps during the same period shows the display of signage for both Primrose Hill Gallery and American Dry Cleaning Company, so also providing a similar indication of the likely use of the site for retail purposes.

Therefore, based on the evidence provided, and taking into account all the available planning history, the planning use of the ground floor unit since 2008 is considered by the Council to fall within former Use Class A1 (Shops). A period of vacancy of the unit between approximately 2013-16 is not considered to constitute abandonment of the use on the basis that the building still appeared physically sound and capable of re-commencing the existing use, the period of non-use was relatively short and there is no evidence of any other intervening uses operating during that period. As such, the existing use of the ground floor unit at the start of this period of vacancy is considered to have remained the lawful use during that period.

Turning to the relevant Order, in this case 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 broad number of commercial, business and service uses. These include (but are

not limited to): E(a) *Display or retail sale of goods, other than hot food, principally to visiting members of the public.*

Regulation 7 of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2020 states that if a building was being lawfully used for (former) Use Classes A1 (Shops), A2 (Financial and professional services), A3 (Restaurants and cafes) or B1 (Business) purposes as of 01/09/2020, it is to be treated (for Use Classes Order purposes) as being used for a Class E use thereafter.

Therefore, given that the planning use of the ground floor unit at the application site since 2008 is considered to fall within former Use Class A1 (Shops), and that this former Use Class is now classified under Use Class E, it follows that the existing use of the unit must fall within Use Class E.

### **Conclusion**

Overall, therefore, it is considered that the information provided by the applicant is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use of the ground floor for purposes falling within commercial, business and service use (Class E) began at least ten years before the date of this application, and has continued to do so until the present time.

This being the case, and given the fact that the Council does not have any evidence to contradict or undermine the applicant's version of events, a retention of the current use of the ground floor of the property as a dry cleaners (Use Class E) is lawful and would not require planning permission.

In this respect, it is recommended that a Certificate of Lawfulness be granted.

**Recommendation:** Grant Certificate of Lawfulness