

<b>LDC (Proposed) Report</b>		<b>Application number</b>	2023/5179/P
<b>Officer</b>		<b>Expiry date</b>	
Tony Young		02/02/2024	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
123 Castlehaven Road London NW1 8SJ			
<b>Conservation Area</b>		<b>Article 4</b>	
No		Yes (basements)	
<b>Proposal</b>			
Change of use from hot food takeaway to a restaurant for sale of food and drink for consumption on the premises (Class E).			
<b>Recommendation</b>		<b>Grant Lawful Development Certificate</b>	

### Introduction

The application site comprises a 3-storey, terraced property situated on the west side of Castlehaven Road, south of the junction with Prince of Wales Road and north of the junction with Grafton Crescent. The upper floors are in residential use. The use of a ground floor unit is the subject of this application.

The building and terrace are not listed or located within a designated conservation area.

The application seeks confirmation that a change of use from hot food takeaway to a restaurant use for sale of food and drink for consumption on the premises (Class E) would be permitted development, and as such, would not require planning permission and is lawful.

No external alterations are proposed as part of the application.

### Applicant's Evidence

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

- Existing floor plans and elevations (ref. 01), including site location plan showing the boundary of the site outlined in red;
- Proposed floor plans and elevations (ref. 02), including existing and proposed block plans.

### Council's Evidence

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

- 2012/2095/P - Retention of 2 x two bedroom self-contained flats at first and second floor levels as replacement for three bedroom maisonette including the replacement of existing windows with uPVC framed windows and the creation of a roof terrace (Class C3). Planning permission granted subject to a section 106 legal agreement dated 13/12/2012
- 2008/5771/P (nos. 121-123) - The erection of an additional third storey at both properties and a rear extension at 1st floor level to number 121, alterations and extensions to the ductwork on the rear elevation, plus the conversion of non-self contained residential accommodation at number 121 into a self-contained 4/5

bedroom flat; conversion of 4 bedroom self contained flat on the upper floors of number 123 into 1 x one bedroom and one x 3 bedroom self contained flats (Class C3). Refused planning permission dated 22/05/2009

- A9600717R1 – Display of an internally illuminated fascia sign and projecting sign at fascia level. Advertisement consent granted 19/04/1996
- 9401015 - The change of use of the ground floor from retail shop to restaurant and the erection of a ventilation duct at rear. Planning permission granted 15/09/1994

There is no relevant enforcement history for the subject site.

#### Business rates:

- Valuation details are available for the subject site from 01/04/2017 to the present time. The site is described as 'Shop and premises' (Local Council reference: 00501012310002).

#### Retail surveys:

- Information provided from Council Retail Surveys dated between 2012 and 2019 indicate that the ground floor of the application site were categorised as being in Class A5 use (hot food takeaway) during this period, and thereafter, in Sui Generis use.

#### Council tax:

- Valuation for band B properties (Flats 1 and 2) effective 2011 (Local authority reference numbers: 5161219 and 5161220 respectively).

### **Assessment**

#### The last lawful use

It is firstly necessary to establish the current lawful planning use of the relevant part of the application site (ground floor level) as use rights for a proposed use stem from the current lawful use.

The above planning history and all relevant available information, indicates the following as evidence of the last lawful use:

Following the grant of planning permission in 1994 (ref. 9401015) for a change of use of the ground floor from retail shop to restaurant (formerly Use Class A3) and the erection of a ventilation duct at rear, the premises was used as a restaurant, 'Castle Tandoori'. A subsequent advertisement application approved in 1996 (ref. A9600717R1) confirms the display of signage for this establishment, and as such, consistent with a restaurant use.

In 2009, the application submission relating to the upper floors of the application site and refused planning permission (ref. 2008/5771/P), includes an application form and existing ground floor plan which specifically refer to and show a takeaway use at ground floor level. More explicitly, in 2012 the relevant ground floor area is stated as falling within a Class A5 use in the Officer Delegated Report associated with planning permission granted for works to the residential units on the upper floors (2012/2095/P). At that time, Use Class A5 permitted the sale of hot food for consumption off the premises consistent with a takeaway use.

Council Retail Surveys dated between 2012 and 2019 confirm a continuation of a Class A5 use (hot food takeaway) at ground floor level of the application site. A Sui Generis use is indicated thereafter until the present time, following a reclassification of the planning

use classes as a result of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2020, effective from 01/09/2020.

Overall therefore, based on the evidence provided, and taking into account all the available planning history, on the balance of probabilities, the use of the ground floor unit at the application site as a hot food takeaway, 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, the lawful current planning use of the relevant area is considered to be as a hot food takeaway (Sui Generis), previously falling within former Use Class A5.

#### Application proposal

Having established the current lawful planning use of the relevant part of the application site, consideration is now given to the proposed change of use from hot food takeaway (Sui Generis) to a restaurant use for the sale of food and drink for consumption on the premises under Use Class E.

There are a number of permitted development rights within the Use Classes Order which grant general planning permission, allowing changes of use between some current and former use classes without the need to submit a planning application.

Class A under Part 3 of Schedule 2 of the Town & Country Planning (General Permitted Development) Order 2015 (as amended) is the relevant legislation in this case, and as such, due consideration is now given to the proposal in regard to Class A(d) below:

#### **Town & Country Planning (General Permitted Development) Order 2015 (as amended) - Schedule 2, Part 3 (Changes of use)**

**Class A** - Development consisting of a change of use of a building from a use falling within one of the following provisions of the Use Classes Order—

- (a) article 3(6)(m) (casino);
- (b) article 3(6)(n) (betting office);
- (c) article 3(6)(o) (pay day loan shop); or
- (d) article 3(6)(r) (hot food takeaway),

to a use falling within Class E (commercial, business and service) of Schedule 2 to that Order.

#### Condition:

**A.1.** Development under Class A is permitted subject to the condition that, before beginning the development, the developer provides written notification to the local planning authority of the date on which the use of the building will change.

#### Conclusion

The proposal is considered to satisfy all criteria as set out under Schedule 2, Part 3, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), subject to condition A.1.

As such, the use, or part use, of the relevant part of the application site as a restaurant, or for any other purpose falling within Use Class E (commercial, business and service), would be permitted development and lawful.

**Recommendation:** Grant certificate of Lawful Development

