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| <b>LDC (Existing) Report</b>                    |  | <b>Application number</b>                 | 2023/4722/P |
| <b>Officer</b>                                  |  | <b>Expiry date</b>                        |             |
| Tony Young                                      |  | 28/03/2024                                |             |
| <b>Application Address</b>                      |  | <b>Authorised Officer Signature</b>       |             |
| 79 Regent's Park Road<br>London<br>NW1 8UY      |  |   |             |
| <b>Conservation Area</b>                        |  | <b>Article 4</b>                          |             |
| Primrose Hill                                   |  | Yes (heritage & conservation / basements) |             |
| <b>Proposal</b>                                 |  |   |             |
| Use of ground floor as estate agents (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. The subject of this application is a single commercial unit at ground floor level which is currently occupied by an estate agents (Savills).

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 an estate agents 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. P111 revision A) has formerly been in use as a café (former Class A3 use) since at least July 2008, and subsequently operating as an estate agents since 2016 (former Class A2 use) until the present time.

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 an estate agents (former Class A2 use) and before that by a café (former Class A3 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 this assertion:
- Photograph dated 07/08/2023, asserted as showing the ground floor interior of the premises in use as an estate agents;
- Decision notice (2013/4055/P) granted and dated 22/11/2013, confirming that the lawful use of the ground floor as a cafe (former Class A3 use) began more than 10 years before the date of that application;
- Lease document (between 79/81 Regents Park Road Ltd. and Savills (UK) Ltd.) dated 22/02/2016, listing Savills as the tenant of the ground floor premises at the

application site for a period of 10 years from the commencement date. The permitted use as given by the lease is stated as being within (former) Use Class A2;

- 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. P110 A) showing the boundary of the site outlined in red;
- Existing ground floor plan (ref. P111 A).

## **Council's Evidence**

### Planning history:

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

- 2016/0541/P - Installation of new awning and entrance door to replace existing in connection with Estate Agent (Class A2). Planning permission granted 23/05/2016
- 2016/0540/A - Display of 1 x internally illuminated letterings and a non-illuminate vinyl forming the fascia sign, and 1 x internally illuminate projecting sign. Advertisement consent granted 23/05/2016
- 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
- 2013/4055/P - Continued use of the ground floor as cafe (Class A3). Certificate of lawfulness (existing) granted 22/11/2013
- 2012/4671/P - Continued use of the ground floor as restaurant (Class A3). Certificate of lawfulness (existing) refused 01/11/2012 - the submitted information was deemed to be insufficiently precise and ambiguous to demonstrate that on the balance of probability an A3 use has been operating in the premises for a period of more than 10 years.
- PE9800674 - The removal of condition number 1 from planning permission granted 28th June 1998 (Council ref. PL/8701398). Planning permission granted 18/01/2000
- 8701398 - Change of use of ground-floor from retail to part-retail and part coffee shop (ground floor). Planning permission granted 07/06/1988

Relevant enforcement history for the subject site:

- EN14/0422 – display of advertisement sign. Breach ceased and case closed 30/07/2014

### Tables & chairs application history:

- Licence applications (refs. 2009/4896/TC / 2010/5533/TC / 2011/5397/TC / 2013/0042/TC / 2013/6754/TC) – renewal applications for the siting of tables and chairs outside the premises granted variously between 2009 and 2013 in connection with a café use (referred to as 'Cafe Seventy Nine').

Business rates:

- Valuation at the subject site is effective from 01/04/2023 to the present time. The site is described as '*Shop and premises*' (Local Council reference: 00622007910012);
- Previous valuation at the subject site with effective from 01/04/2017 to 31/03/2023. The site is described as '*Shop and premises*' (Local Council reference: 00622007910012).

#### Retail surveys:

- Information provided from Council Retail Surveys dated between 2004 and 2022 indicate that the ground floor of the application site has been variously in use as Class A3 (cafe use) and Class A2 (estate agents use) during the relevant period.

#### Council tax:

- Tax band deleted with effect from 01/12/2015 (Local authority reference number: 5118144 - 79 Regent's Park Road London NW1 8UY).

### **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 the use of the site at ground floor level is lawful and formerly operated as a café ('Café Seventy Nine'). A Certificate of Existing Use application (ref. 2013/4055/P) for a '*Continued use of the ground floor as cafe (Class A3)*' was granted on 22/11/2013 and establishes the lawful use of the site at that time to be a café (former Class A3 use). Further evidence provided indicates that the ground floor of the site was subsequently in use as an estate agents ('Savills') from 2016 until the present day. In this regard, the applicant asserts that a change in use from former Use Classes A3 to A2 was permitted development at the time in accordance with the Town and Country Planning (Use Classes) Order 1987.

The Council's Retail Surveys indicate that the ground floor unit at the application site was in use consistent with a former Class A3 use from 2004, with an alteration in use to former Class A2 around 2016 to the present time. Various relevant planning and licencing (tables & chairs application) history are consistent with this position during the same period. Additionally, independent photographic evidence from Google Maps between 2008 and 2022 shows the display of signage and occupation of the ground floor premises for both

'Café Seventy Nine' and 'Savills', and as such, provides a similar indication of the likely use of the site at various points during this period.

Additionally, it is noted that under the Town and Country Planning (Use Classes) Order 1987 (as amended) a change of use from former Use Classes A3 to A2 was permitted development under the Order and did not require formal planning consent.

Therefore, based on the evidence provided, and taking into account all available planning history and other relevant information, the lawful planning use of the ground floor unit is considered to have operated formerly as a café (former Class A3 use) and subsequently as an estate agents (former Class A2 use) during the requisite 10 year 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(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; and E(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.*

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 is considered to have operated as a café (former Class A3 use) and subsequently as an estate agents (former Class A2 use) during the requisite 10 year period, and that both former Use Classes are 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 an estate agents (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