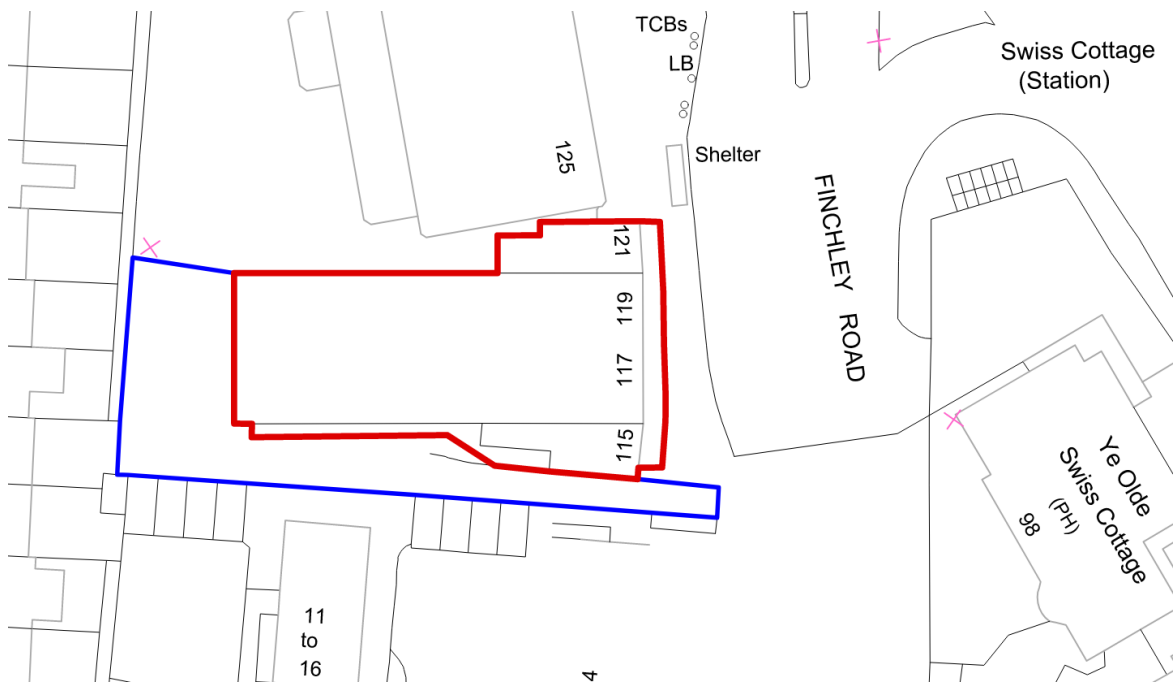


Lawful Development Certificate (Proposed)

Address:	Lower ground and ground floors 115 – 121 Finchley Road London NW3 6HY
App Number(s):	2024/0126/P
Officer:	Elaine Quigley
Application date:	12/01/2024
Expiry date:	19/03/2024 (EOT 27/03/2024)
Proposal:	Amalgamation of lower ground and ground floors of 115, 117, 119 and 121 Finchley Road to create a single use as a gymnasium (Class E use).
Documents and drawings:	(TP)_001; (EX)_100; (EX)_101; TGG_SWI - OPT 2; Cover letter ref:1257 dated 11 January 2024;
RECOMMENDATION:	Grant Lawful Development Certificate

1. SITE AND BACKGROUND

1.1 The certificate is for the land and building(s) show below:



2. THE PROPOSAL

2.1 The description applied for under the certificate is:

Amalgamation of lower ground and ground floors of 115, 117, 119 and 121 Finchley Road to create a single use as a gymnasium (Class E use).

- 2.2 Although the proposed plan shows the amalgamation of the ground floor units, it shows only part of the lower ground floor (the part to the rear of the site) being part of the proposed use, with the front sections at that level shown outside of the proposed red line. The use of all the units appears to be as Class E (see sections 4 and 5 below) but the proposed plans are shown to exclude the front sections at lower ground, so the description should reflect the drawings. The LPA has the power to amend the description on the certificate and as such, the description has been amended to:

Amalgamation the ground floors and part of the lower ground floors of 115, 117, 119 and 121 Finchley Road to create a single use as a gymnasium (Class E use).

3. FRAMEWORK AND KEY ISSUES

- 3.1 Section 55 of the Town and Country Planning Act 1990 defines “development”. Planning permission is required for most forms of “development” (unless excluded by Section 57). However, Section 55(2) says, amongst other things:

“The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land -

...

(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.”

- 3.2 The relevant Order is the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 3.3 **Class E** of the Order is broad and covers commercial, business, and service uses. These include (emphasis has been added):

E(a) Display or retail sale of goods, other than hot food

E(b) Sale of food and drink for consumption (mostly) on the premises

E(c) Provision of:

E(c)(i) Financial services,

E(c)(ii) Professional services (other than health or medical services), or

E(c)(iii) Other appropriate services in a commercial, business or service locality

E(d) Indoor sport, recreation or fitness (not involving motorised vehicles or firearms or use as a swimming pool or skating rink)

E(e) Provision of medical or health services (except the use of premises attached to the residence of the consultant or practitioner)

E(f) Creche, day nursery or day centre (not including a residential use)

E(g) Uses which can be carried out in a residential area without detriment to its amenity:

E(g)(i) Offices to carry out any operational or administrative functions,

E(g)(ii) Research and development of products or processes

E(g)(iii) Industrial processes

- 3.4 The proposed use is clearly within Class E so the key issue is the probable existing lawful use of the land. If the lawful use is Class E, then the proposed change to a gym will also be lawful.

4. PLANNING HISTORY AND EXISTING LAWFUL USE OF THE LAND

- 4.1 The planning history of the lower ground and ground floors is not very clear and there have been several changes in use over several years. There have also been amalgamations and severance of the planning units over time.

1 June 2018: Enforcement Notice against commercial kitchens

- 4.2 On 1 June 2018 an enforcement notice EN17/1005 was issued on in relation to the lower ground floor at the rear part of the site. This originally alleged change of use from light industrial to commercial kitchens and delivery centre.

- 4.3 However, the council changed its position during the appeal against the notice (APP/X5210/C/18/3206954), instead concluding the use was likely a mix of commercial uses that now fall within class E. The inspector referred to the lack of clarity over the previous uses, and so amended the notice by deleting reference to the previous use.

“The information available on the planning history indicates that the lower ground floor was used for ancillary storage in conjunction with the use of the frontage units. The change to the current use involved the creation of a new planning unit and a new chapter in the planning history.”

- 4.4 The planning history for the site indicated the lower ground and ground floors had operated in conjunction with one another, for retail, restaurants, and offices, all of which are within Class E. The notice was quashed and temporary permission was granted (see below).

17 September 2019: Temporary planning permission GRANTED (on appeal)

- 4.5 On 17 September 2019 temporary planning permission was granted by the inspector to the Enforcement Notice appeal for 14 months (APP/X5210/C/18/3206954). The permission for that use lapsed on 16 November 2020.

3 March 2021: Temporary planning permission GRANTED

- 4.6 Temporary planning permission (ref 2020/2367/P) was granted subject to a s106 legal agreement on 3 March 2021 for a further 9 months to allow monitoring of impacts. The permission for that use lapsed on 2 December 2021.

22 April 2022: Temporary planning permission REFUSED

- 4.7 Temporary planning permission (ref 2021/4792/P) was refused permission on 22 April 2022. Although an appeal was submitted against the refusal, this was withdrawn in February 2023 when the operator decided to vacate the property.

Existing lawful use

4.8 The evidence suggests that the parts of the lower ground and ground floors that are part of this application were in use for a variety of uses that all fall within the scope of class E. The only other use was the intervening unauthorised commercial kitchens and distribution use which severed and separated the lower ground floor into a new planning unit. However, this was subject to a planning permission for limited periods. The temporary permissions were subject to conditions requiring the use to cease at the end of those periods.

4.9 Section 57(2) of the Act says:

“Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted.”

4.10 The ground floor parts of the site are either in use as restaurant (115) or retail (117, 119, and 121). The lower ground floor parts are either connected to and operate as part of the ground floor units, or (in the case of the part to the rear) are vacant but have the right to revert to other class E uses.

5. ASSESSMENT

5.1 The existing uses on the site are for retail and restaurant (and ancillary uses), which all fall within the above Class E, under paragraph **E(a), E(b), and E(c)(iii)**. The proposed use as a gymnasium also falls within the same Class, this time under paragraph **E(d)**.

5.2 There are no extant conditions that explicitly prevent or otherwise restrict uses within a use class at this site.

5.3 As such, the change of use would be for a purpose of the same class, and so would not constitute “development” as defined by Section 55 of the Town & Country Planning Act 1990, and therefore would not require planning permission.

6. RECOMMENDATION

6.1 Grant Lawful Development Certificate for Proposed Development.

6.2 The change of use would be for a purpose of the same class (Use Class E), and so would not constitute “development” as defined by Section 55 of the Town & Country Planning Act 1990, and therefore would not require planning permission.