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Our Ref: 1257
3rd April 2024

Dear Planning Dept,

115-121 FINCHLEY ROAD, NW3 6HY
CERTIFICATE OF LAWFUL USE OR PROPOSED DEVELOPMENT
PLANNING PORTAL REFERENCE: PP-12935687

Please find enclosed an application for a lawful development certificate submitted under s.192 of the Town and Country Planning Act 1990 (the 1990 Act) on behalf of Principal Investments International Limited (the **Applicant**).

The lawful development certificate is sought to confirm that the existing commercial units at 115-121 Finchley Road (the Site) benefit from unrestricted use within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) and that planning permission is not, therefore, required for their amalgamation and use, as a gym (Use Class E). Only internal alterations are required to bring this development about.

Section 192 of the 1990 Act provides for an application to determine whether any proposed use or development would be lawful for planning purposes. This application is for a determination of fact, and not one of planning merits. The application seeks to determine if use of the Site as a gym (Use Class E) would be lawful on the date of the application. Establishing the current lawful use of the Site is the starting point, as use rights for a proposed use stem from that current lawful use.

Background

The application Site is located on the west side of Finchley Road (A41) within the boundaries of the town centre at Swiss Cottage. Whilst within the town centre, the Site does not comprise primary nor secondary retail frontages.

This application relates only to the ground and part basement floors of the Site, which forms part of a 5-storey building, comprising various high street uses at ground and basement, with residential above.

The building is understood to date from the 1960s, when the building on Site was first constructed under planning permission ref: TP21868/5675. Since that time, the Site has accommodated a variety of high street uses at ground and basement levels.

The owners of the building intend to amalgamate the various units and let the space to a gym operator. This application seeks to confirm that the proposed gym operation of the application Site would be lawful and would not require planning permission.

A certificate of lawfulness was granted earlier this year (26/3/2024), under application ref 2024/0126/P, which certified that the 'amalgamation of the ground floor 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)', was lawful. That application did not include two areas at the lower ground floor level as they fell outside of the area previously sought to change. The current application now seeks to include those areas at the lower ground as part of the overall amalgamation of the units.

Existing Uses

The existing building at the application Site was first constructed following the grant of permission in 1956 (ref: TP21868/5675) (later renewed in 1960) for the erection of a part two-part and part five storey building, comprising shops and supermarket on lower-ground and ground, five self-contained flats at first floor and five self-contained maisonettes at second and third floors with ancillary garages at the rear. The original building was host to four commercial units nos. 115, 117, 119 and 121, each of which featured a main ground floor retail area and basement within the main building below. In addition, the two central commercial units (117 & 119) projected rearwards to include the two-storey rear building at both ground and lower ground floor level.

Since its first construction, these commercial units had been subject to numerous planning applications including for their sub-division and changes of use. The planning history would indicate the following land uses changes to these units:

No.115

Permission was granted in 1961 for a new shop front and for the use of the unit to change from retail (A1) to a restaurant (A3). The unit is currently occupied by Zzang, a Korean restaurant – Use Class E.

No.117 & 119

Records indicate that these two units have been merged and sub-divided as well as subject to changes of use several times. Permissions from the 1980's (refs: 35429 and 8400217) indicate that these two units were amalgamated into a single planning unit which contained a large double fronted sales area as well as the whole of the two-storey rear building which was used as an ancillary store. Approved plans from 1984 (see ref. 8400217) show that whilst host to Comet Electronics store at the time, this combined unit included conveyor belts from the store up to ground level which remained in situ.

In 1991, permission was then granted for the lateral sub-division of the larger unit back into two with both units retaining part of the two-storey rear building for use as stores and WCs. Under this permission, no.117 became a restaurant use (A3) and no.119 was retained as a retail unit (A1). The units, including the rear two storey building, appear to have been kept as two separate units thereafter.

In 1992, permission was granted for no.119 (only) to be converted into a mix of uses including retail and offices. The Application for No.119 was made by the British Red Cross Society and the description of development in the application form was: "Change of use of rear part of ground floor to Red Cross Centre (comprising offices and training room) ancillary to existing retail shop".

With regard to the rear two storey element, in 2017 this element was used for commercial kitchens. Deliveroo began to use the rear part of the Site, and this was formalised, albeit only a temporary basis, on two occasions (2020 and 2021), The planning permission granted 'the use of the land and buildings at the rear of 115-119 Finchley Road (lower ground floor), for commercial kitchens and delivery centre (sui generis) and the installation of external plant to facilitate that use including three (3) extract ducts, four (4) flues, three (3) air intake louvres and three (3) air condenser units.

Condition 1 stated that 'the use hereby permitted shall be *for a limited period* being the period of 14 months (expiring 17th November 2020) from the date of this decision. The use hereby permitted shall cease on or before that date and all external plant and equipment facilitating the use shall be removed from the site no later than 15 months after the date of this decision (17 December 2020)'.

Subsequently full planning permission was sought for the "Use of the site as commercial kitchens and delivery centre (Sui Generis use) on a permanent basis, installation of external plant equipment including 3 extract ducts, 4 flues, 3 air condensers, 3 air intake louvres and vents, creation of e-bike and cycle parking, e-bike charging point, bin store and 1 parking space (RETROSPECTIVE)." Planning permission was granted 3rd March 2021, however, again only on *a temporary basis* for 9 months. Condition 1 states that "the use hereby permitted shall cease on or before that date and all external plant and equipment facilitating the use shall be removed from the site no later than 10 months after the date of this decision, (so, 3 January 2022).

A further application was submitted in November 2021, with full planning permission being sought for the "Use of the site as commercial kitchens and delivery centre (Sui Generis use) on a permanent basis, installation of external plant equipment including 3 extract ducts, 4 flues, 3 air condensers, 3 air intake louvres and vents, creation of e-bike and cycle parking, e-bike charging point, bin store and 1 parking space (RETROSPECTIVE)." Despite an officer recommendation for approval, the application was refused on 22nd April 2022 for four reasons.

With the temporary consents having now lapsed, the commercial kitchen and delivery centre use (sui generis) at the rear of 115-119 Finchley Road (lower ground floor) is no longer lawful. Deliveroo vacated the Site in 2022. Having regard to the planning history outlined above, and the end of the temporary permissions, the lawful use of this part of the Site is considered to now revert to previous Class A1 and/or A3, which are now subsumed within Class E.

The units fronting Finchley Road are currently occupied by Doctor Scooter and Emerald, both retail units – Use Class E. The rear element remains vacant since Deliveroo's departure in 2022, but its lawful use is Class E.

No.121

Permission was granted in 1961 for a change of use of this unit from retail to a dry cleaners. Records indicate that the permitted dry cleaners use remained in situ until 2008, when the use of the unit was converted back into a retail use (A1).

This unit is currently occupied by Adil Food, retail – Use Class E.

Accordingly, having undertaken a detailed analysis, all of the units within this Site (115-121 odd) have a lawful Class E use class.

As noted above, a certificate of lawfulness was granted earlier this year (26/3/2024), under application ref 2024/0126/P, which certified that the ‘amalgamation of the ground floor 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)’, was lawful.

The officer delegated report concluded that 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 officer report also noted that there are no extant conditions that explicitly prevent or otherwise restrict uses within a use class at this site.

Proposed Use

The proposed development involves carrying out internal alterations, across ground and lower ground levels, to amalgamate all units within 115-121 (odd) and to operate a commercial gym (Class E)

Lawfulness of the Development

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1st September 2020 and have amended the Use Classes Order to introduce Class E (‘Commercial, Business and Service’).

Use Class E includes the previous Class A1 (retail) uses, as well as number of other commercial uses, including gymnasiums, which previously fell within Class D2. Accordingly, the existing uses and the proposed use of the application Site are considered to both fall within the same use class.

Section 55(2)(f) of the Town and Country Planning Act states that the following will **not** amount to development.

“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.

The introduction of a gymnasium to the existing retail units would not require planning permission, unless the normal operation of the Use Classes Order has been restricted by an existing planning permission (i.e. is restricted by a planning condition).

Additionally, Section 55(2)(a) confirms that the carrying out of “*maintenance, improvement or other alteration of any building or works which— (i) affect only the interior of the building*”

does not amount to development. Only internal alterations are proposed to bring this development about.

As noted above, a certificate of lawfulness was granted earlier this year under application ref 2024/0126/P, which certified that the 'amalgamation of the ground floor 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)', was lawful.

The officer delegated report concluded *'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). There are no extant conditions that explicitly prevent or otherwise restrict uses within a use class at this site. 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.'*

It is considered that the same conclusions can be met, when including the additional two areas at lower ground level which were not previously included in the site edged red.

Summary

This application seeks a lawful development certificate to confirm that the proposed use of the existing commercial units at 115-121 Finchley Road as a gymnasium (along with internal alterations) does not require planning permission. Due to recent changes to the Use Classes Order introduced in September 2020, former Class A1 and Class D2 uses now both fall within Class E. Planning permission for change of use is not therefore required.

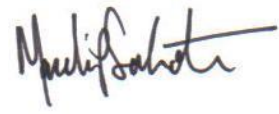
With regard to the amalgamation of the units, to create one larger unit, Section 55 (2)(a)(i) confirms that the carrying out for the maintenance, improvement, or other alteration of any building of works which affect only the interior of the building, do not constitute development. Prior planning permission is therefore not required for the proposed amalgamation.

With regard to use, Section 55(2)(f) of the Town and Country Planning Act 1990 is applicable in this instance and the use of the existing commercial units at 115-121 Finchley Road, as a gym, within Use Class E, will not constitute development or a material change of use requiring planning permission.

A certificate of lawfulness was granted earlier this year under application ref 2024/0126/P, which certified that the 'amalgamation of the ground floor 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)', was lawful. The current application simply seeks to include two additional areas at the lower ground level which were previously excluded from the red line plan.

In conclusion, on the basis of the information provided, we seek a lawful development certificate under s. 192 of the Town and Country Act 1990 to confirm that the application Site benefits from unrestricted Class E use and that the proposed internal amalgamation of the units and use as a gym would not involve a material change of use requiring planning permission.

Kind regards,

A handwritten signature in dark ink, appearing to read 'Mandip Singh Sahota', with a long horizontal stroke extending from the end.

MANDIP SINGH SAHOTA

PARTNER

NTA PLANNING LLP