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03 April 2024

London Borough of Camden
2nd Floor, 5 Pancras Square
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London
WC1H 9JE

Dear Sir / Madam,

LAWFUL DEVELOPMENT CERTIFICATE
36 - 38 HATTON GARDEN LONDON EC1N 8EB

This application is made under Section 192 of the Town and Country Planning Act 1990. It seeks a Lawful Development Certificate in respect of 36-38 Hatton Garden, London EC1N 8EB.

The applicant seeks confirmation that a proposed use of the building and land within Class E would be lawful for planning purposes.

The application has been submitted via the Planning Portal (ref. PP-12792085) with the following documents:

- Completed Application Forms;
- This Covering Letter (encompassing the Applicant's Statement of Case demonstrating the lawfulness of the existing use, entailing a description of the application site, details of the existing use and proposed uses, justification as to why this would be lawful and the date of the application);
- Site Location Plan;
- Existing Ground Floor Plan; and
- Proposed Ground Floor Plan.

The requisite fee of £289, plus the £64 admin fee, has been paid online. The documents submitted are in accordance with the Council's validation requirements for certificate of lawfulness applications.

Application Site Description

36 – 38 Hatton Garden is a basement plus six storey building located on the east side of Hatton Garden, north of the junction with Greville Street and south of St Cross Street. The application site specific to this certificate of lawfulness application is the ground floor level of number 36, known as 'Boutique 36'.

The building dates from the early 20th century and has a stone clad façade to the street frontage. The site is located within the Hatton Garden Conservation Area but is not a listed building.

Further along Hatton Garden, there are a variety of retail, commercial and jewellery related uses.

Planning History

Planning permission was granted in June 1983 for ‘*The use of the ground floor as a jewellery showroom and auction room with ancillary offices*’ (ref. **36420**). A copy of the decision notice and approved plan are included at Appendix 1. The plan clearly depicts the floorspace in question including a showroom for sales, offices and an auction room. Whilst not specifically described as retail within the consent, this use was for the display and retail sale of goods, other than hot food, principally to visiting members of the public.

Appendix 1

In 1997, planning permission was granted for ‘*Enclosing light wells to provide additional commercial (Class B1) office space; as shown on drawing numbers 1861/10, 11, 8, 12, 25A, 26A and 27A*’ (ref. **PS9705103**). A copy of the decision notice and approved plans are included at Appendix 2. The plans clearly depict the floorspace as retail, now Class E.

Appendix 2

In 2013 planning permission (ref. 2013/3734/P) was granted for installation of 14 air conditioning units as replacement for existing and erection of acoustic louvre screen enclosure at the roof level; installation of skylight enclosure over lightwell, formation of new roof terrace plus installation of handrails, plus wall mounted lights in connection with offices (Class B1a Installation of new plant room, new roof terrace for maintenance and roofing over existing skylight. to existing offices (Class B1). The Officers report describes the ground floor as jewellery A1 retail units with office use on the upper floors (see Appendix 3)

Appendix 3

The ground floor area subject to this certificate is therefore an established retail floorspace within Class E (formerly Class A1) of the Use Classes Order.

Legislative Background and Requirements

Lawful Development Certificates

This application is made under Section 192 of the Town and Country Planning Act 1990 (the “Act”). Section 192 affords individuals the opportunity to apply to the Local Planning Authority to obtain a decision on whether: “*a proposed use of buildings or other land, or any operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes*”.

The Government guidance states that if the Local Planning Authority is provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.

The statutory framework covering “lawfulness” for lawful development certificates is set out in Section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

Section 171B (3) of the Act sets out the relevant period after which enforcement action cannot be taken: “*In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach*”. This time period relates to both changes of use and breaches of conditions.

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the “DMPO”) specifies the contents of an application and how it must be submitted. It sets out that an application needs to

describe precisely what is being applied for and the land to which the application relates. This application has been prepared to satisfy the requirements of the DMPO.

It goes on to state that the applicant is responsible for providing sufficient information to support an application, although a Local Planning Authority always needs to cooperate with an applicant who is seeking information that the authority may hold about the planning status of the land.

In the case of applications for proposed use, an applicant needs to “*describe the proposal*” with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

The relevant legislation further affirms that there is no statutory requirement to consult third parties including parish councils or neighbours; indeed, views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application. A Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this application process.

The guidance goes on to state that in determining an application for a prospective development under section 192 a local planning authority needs to ask: “*if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?*”

Planning Assessment – Proposed Use

Existing Use

The applicant considers the Use Class of the existing building and land to be within Class E of the Town and Country Planning (Use Classes) Order 1987, as amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (“2020 Amendment”).

Schedule 2, Part A Commercial, Business and Service outlines Class E as follows:

Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes—

- a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,**
- 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,**
- 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*
- d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,**
- e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,**
- f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,**
- g) for—**
 - i. an office to carry out any operational or administrative functions,*
 - ii. the research and development of products or processes, or*
 - iii. any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.*

The planning history for the site demonstrates that the floor area in question has benefitted from consent for retail use since 1983 (over 40 years), under consent ref. 36420 for the *'The use of the ground floor as a jewellery showroom and auction room with ancillary offices'*.

The retail use is further reinforced under consent ref. PS9705103 as shown on the approved plans for *the 'Enclosing light wells to provide additional commercial (Class B1) office space; as shown on drawing numbers 1861/10, 11, 8, 12, 25A, 26A and 27A'*.

Class E use is further evidenced by Valuation Office Agency's 'business rates' rating of the building, which is described as "Shop and Premises". A copy of this is attached at Appendix 4.

Appendix 4

Furthermore, the floorspace is currently occupied by jewellery retail counters whose lease is due to expire imminently.

The above therefore demonstrates that the building has benefitted from use as retail since 1983. There are no conditions restricting this use specifically to retail and therefore the floor area can now be considered to be Class E.

Proposed Use

The existing building will soon be vacant and therefore the Applicant is seeking confirmation that the building could be used for other Class E uses such as a mixture of retail and office uses.

Both the existing and proposed uses fall within the same planning use class, Class E of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

Planning permission is not required for a change of use of a building and land from one use to another within the same use class. This is confirmed within the Town and Country Planning Act 1990 under Section 55 Part (2) f), which states:

"(2) 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".

Furthermore, Article 3 (1) of the Use Classes Order states that:

"Subject to the provisions of this Order, where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land.

The Explanatory Memorandum accompanying the "2020 Amendment", which introduced Class E, further emphasises that a change of use within a single-use class is not considered to be development and therefore does not require planning permission. It goes on to state that:

“Bringing these uses together and allowing movement between them will give businesses greater freedom to adapt to changing circumstances and to respond more quickly to the needs of their communities”.

It further states that:

“These reforms are primarily aimed at creating vibrant, mixed use town centres by allowing businesses greater freedom to change to a broader range of compatible uses which communities expect to find on modern high streets, as well as more generally in town and city centres. They apply to all uses of land and buildings across England”.

It is understood no restriction exists on the operative planning permission that limits the use of the building or that would prevent any other Class E use from taking place at the site.

In light of the above, the use of the application site as general Class E use, as described and depicted on the submitted proposed floor plans, would not amount to ‘development’ and would not require planning permission given the use of the building would remain within Class E.

Conclusions

This application is made under Section 192 of the Town and Country Planning Act 1990 and seeks a Lawful Development Certificate confirming that the proposed use of the site for a mixture of uses such as retail and office under Class E would be lawful in respect of the ground floor of 36 Hatton Garden, London EC1N 8EB.

This submission has demonstrated that the building and land are lawfully used as retail, which falls within Class E of the Use Classes Order. Furthermore, it has been demonstrated that the proposed uses of the site also fall within Class E and that the relevant legislation confirms that a change of use from one use to another within the same use class does not require planning permission. Furthermore, no restriction is in place that restricts movement within Class E uses.

The submission is therefore consistent with the requirements of Section 192 of The Act and we respectfully request that the Lawful Development Certificate be granted at the earliest opportunity.

Yours faithfully



KATE MATTHEWS
Director