

LDC (Proposed) Report		Application number	2024/1317/P
Officer		Expiry date	
Tony Young		29/05/2024	
Application Address		Authorised Officer Signature	
36-38 Hatton Garden London EC1N 8EB			
Conservation Area		Article 4	
Hatton Garden		Yes (basements / change of use to residential)	
Proposal			
Use of ground floor area as general Class E for uses such as retail or office use.			
Recommendation:	Grant Certificate of Lawfulness		

Introduction

The application site comprises a 6-storey building plus basement located on the east side of Hatton Garden, north of the junction with Greville Street and south of St Cross Street. The wider area in Hatton Garden is characterised generally by a variety of retail, commercial and jewellery related uses.

The building is not listed and the site is located within the Hatton Garden Conservation Area.

This application relates specifically to the ground floor level of no. 36 (known as 'Boutique 36'). This floorspace is currently occupied by jewellery retail counters, the lease being due to expire imminently.

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 proposed use of the ground floor for any purpose falling within Use Class E is lawful and would not require planning permission.

Applicant's Evidence

The applicant asserts that the ground floor area of 36 Hatton Garden, London EC1N 8EB (the application site), currently occupied by a jewellery retailer, is lawfully used as retail (falling within Use Class E) and that a proposed use of the site also falling within Class E does not require planning permission.

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

- Cover letter from Firstplan (agents) ref. 23428/KM/EC dated 03/04/2024, asserting that the proposed use of the application site for uses falling within Class E would be lawful for planning purposes in respect of the ground floor. The following evidence is referred to in support of this assertion:
- Appendix 1 - Documents relating to planning permission ref. 36420 granted 30/08/1983, including a plan asserted as depicting the ground floor floorspace in

question in use as a showroom for sales, offices and an auction room for the display and retail sale of goods, other than hot food, principally to visiting members of the public.

- Appendix 2 - Documents relating to planning permission ref. PS9705103 granted 19/12/1997, including plans asserted as depicting the ground floor floorspace in question in retail use.
- Appendix 3 - Documents relating to planning permission ref. 2013/3734/P granted 10/09/2013, including an officer's delegated report which states that 'the ground floor has jewellery A1 retail units with office use on the upper floors'.
- Appendix 4 - Copy of Valuation Office Agency's 'business rates' document, describing the rating of the building as 'Shop and Premises' in relation to 'Gnd F 36 At 36-38, Hatton Garden, London, EC1N 8EB'.

The applicant has also submitted the following drawings:

- Unnumbered site location plan dated 03/04/2024 showing the boundary of the site outlined in red;
- Existing ground floor plan (ref. GA Rev A) dated 03/04/2024
- Proposed ground floor plan (ref. GA Rev A) dated 03/04/2024

Council's Evidence

Planning history:

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

- **2013/3734/P** - 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). Planning permission granted 10/09/2013
- **2012/2327/P** - Change of use of lower ground floor from office use (Class B1) to Pilates studio (Class D2). Planning permission granted subject to a Section 106 legal agreement dated 22/10/2012
- **2010/2998/A** - Display of new fascia sign on existing shop front (use class A1). Advertisement consent granted 05/08/2010
- **2006/5775/P** - Installation of new entrance doors to office building (Class B1). Planning permission granted 08/02/2007
- **PS9705103** - Enclosing light wells to provide additional commercial (Class B1) office space. Planning permission granted 19/12/1997
- **P9601636** - Change of use and works of conversion to provide five studio flats, five one-bedroom flats and fifteen two-bedroom flats. Refused planning permission dated 12/07/1996
- **A9600499** - The display of internally illuminated projecting box and fascia signs. Advertisement consent granted 21/06/1996
- **9501612** - Change of use from retail shop (A1) to licensed betting office (A2). Refused planning permission dated 13/10/1995
- **9501613** - Change of use from retail shop (A1) to licensed betting office (A2). Refused planning permission dated 13/10/1995

- **36420** - The use of the ground floor as a jewellery showroom and auction room with ancillary offices. Planning permission granted 30/08/1983

There is no relevant enforcement history for the subject site.

Business rates:

- Valuation at the subject site (Gnd F 36 At 36-38 Hatton Garden London EC1N 8EB) is effective from 01/04/2023 to the present time. The site is described as '*Shop and premises*' (Local Council reference: 00135003620009).

The valuation is based on various ground floor shop floor areas – retail zones a-c, office and internal storage areas;

- Previous valuation at the subject site with effective from 01/04/2017 to 31/03/2023 also described the site as '*Shop and premises*' and was based on the same shop floor areas.

Retail surveys:

- Information provided from Council Retail Surveys dated between 2013 and 2022 indicates that the relevant ground floor area of the application site has been in retail use (Class A1) during this period.

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 Council's Retail Surveys indicate that the ground floor unit at the application site was in use consistent with a former Class A1 retail use from at least 2013 until 2022 when the current published survey ends. Various relevant planning history and associated documents are consistent with this position during the same period. Additionally, independent photographic evidence from Google Maps dated between 2012 and 2022 shows the display of signage on the street frontage of the ground floor premises as being 'Boutique 36' and 'fine jewellery' in association with several independent jewellery retailers, and as such, provides a similar indication of the likely use of the site during this period. The site is noted as currently being occupied by jewellery retail counters and known as 'Boutique 36' at ground floor level.

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 within a retail use (former Class A1 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(a) *for the display or retail sale of goods, other than hot food, principally to visiting members of the public.*

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 within a retail use (former Class A1 use) during the requisite 10 year period, and that this former Use Class is now classified under Use Class E, it follows that the existing use of the ground floor unit must fall within Use Class E.

Additionally, it is noted that there are no planning conditions or obligations attached to any previous permissions that would restrict the use of the ground floor premises solely to a retail use, or that would prevent any other Class E use from taking place at the site.

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 (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 proposed use of the ground floor of the property for any purpose falling within 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