

# LDC Report

13/05/2024

Officer	Application Number
Daren Zuk	2024/1334/P
Application Address	Recommendation
The Phoenix Artist Club Limited Basement 104-110 Charing Cross Road London WC2H 0JT	Approve
1 <sup>st</sup> Signature	2 <sup>nd</sup> Signature (if refusal)

## Proposal

Use of the basement level as mixed use (Sui Generis) comprising food and drink establishment, cabaret/performance space, and creative hub.

## Application Site

The subject site at 104-110 Charing Cross Road is a six-story with basement property located on the east side of Charing Cross Road between the junctions with Phoenix Street (south) and Flitcroft Street (north). The site is not listed but located adjacent to the Grade II listed Phoenix Theatre. It is also located within the Denmark Street Conservation Area.

## Relevant Planning History

**P13/35/A/22111** – The change of use of the basement from retail storage to a restaurant.  
**Granted 17/05/1976**

**P13/35/A/27026** – Works to be carried out at 104-110 Charing Cross Road WC2, for the change of use of the basement from retail store to restaurant. **Granted 10/01/1979**

## Assessment

This application seeks a Certificate of Lawfulness (Existing) for the use of the basement of the building as mixed use (Sui Generis) comprising food and drink establishment, cabaret/performance space, and creative hub.

The applicant is required to demonstrate that the existing use of the land is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990. For the purposes of the Act, uses and operations are lawful at any time if:

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*

*(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

The applicant is required to demonstrate, on balance of probability that the existing Sui Generis use has existed for a period of 10 or more years.

### **Applicant's Evidence**

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

- Site Location Plan at 1:1250
- Previous and existing basement level floor plans, with different uses identified
- Copy of lease (dated 10 December 2009)
- Copy of renewal lease (dated 12 November 2018)
- Letter written by Ken Wright, Director of the Phoenix Artists Club, outlining some of the uses of the premises as a Business/Creative Hub over the last 15 years
- Weblink to the Phoenix Artists Club website archive section, which provides evidence of previous performances and events dating from 2010 to 2024

The submitted documents indicate that the Phoenix Artists Club has been in operation at the site since 1988, with leases dating from 2009 and 2018 provided. Basement level floorplans dating from 1994, 2009, 2019, and 2020 demonstrate the use of the premises as a restaurant/bar and cabaret/performance space. Further evidence is provided in the form of a link to the Phoenix Artists Club website's archive section which provided examples of previous performances and events dating from 2010 to 2024.

### **Council's Evidence**

Judging the evidence submitted and the history of the site, officers are satisfied that the use of the basement level as a mixed use (Sui Generis) commenced over 10 years ago pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

### **Assessment**

A certificate of lawfulness for an existing use has been submitted to establish whether the use of the basement level as mixed use (Sui Generis) comprising food and drink establishment, cabaret/performance space, and creative hub, is lawful.

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 (Planning Practice Guidance para. 006), Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the "balance of probability", and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, 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.

The first question is in regard to the use and how the basement level of the building operates. The evidence provided demonstrates that the basement level has been operating as a mixed-use restaurant/bar and cabaret/performance space. It is clear from the submitted floorplans, website and archive section that the premises provides a range of services including restaurant and bar, as well as a variety of cabaret and performance events.

The next question is whether or not this use has operated for a continuous period of ten years or more. From the evidence provided, including leases dating from 2009 and 2018 and website extracts, that the basement level of the building has been in use as a mixed-use (Sui Generis) since at least ten years before the date of this application and have continued to do so until the present time.

Overall, it is considered that the information provided by the applicant is sufficiently precise and unambiguous to demonstrate that, on balance of probability, the basement level of the building has been in use as a mixed-use (Sui Generis) food and drink establishment, cabaret/performance space, and creative hub for a period of more than 10 years.

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, the use of the basement level of the property as a mixed-use (Sui Generis) is lawful and would not require planning permission. In this respect, it is recommended that a Certificate of Lawfulness be granted.

### **Conclusion**

**Recommendation:** Grant Certificate

