

LDC (Proposed) Report	Application number	2021/2516/P
Officer	Expiry date	
Sarah White	15/07/2021	
Application Address	Authorised Officer Signature	
Werewolf Beer Arch 87 Randolph Street London NW1 0SR		
Conservation Area	Relevant article 4	
N/A	None relevant	
Proposal		
A Lawful Development Certificate (Proposed) is sought to confirm that the change of use of the site from a Class B1 Use (now Class E) to a microbrewery and tap room would continue to fall within Use Class E and would therefore be permitted.		
Recommendation:	Refuse Lawful Development Certificate	

Background

- 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) say, amongst other things, that *“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.”
- The relevant Order is the Town and Country Planning (Use Classes) Order 1987 (as amended). Class E of the Order is broad and covers commercial, business, and service uses. These include:
 - 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)(iii) Other appropriate services in a commercial, business or service locality
 - E(g) Uses which can be carried out in a residential area without detriment to its amenity:
 - E(g)(iii) Industrial processes
- The current proposal seeks to use the site as a microbrewery and taproom. The brewery would produce approximately 200 barrels per year. The taproom would be open two days a week and would likely grow to four days over a three-to-four-year period. The Premises License states that the retail of alcohol is permitted to occur on Fridays between 16:00 – 21:00 and Saturdays between 12:00 – 21:00 and that patron numbers shall be limited to a maximum of 50 outside and 50 indoors. The applicant has explained that during the week the yard area would be used as a loading area and on the weekends and evenings it would be used for the taproom and customer seating.
- Microbreweries are regarded as Use Class B2 (industrial) activities as they have the potential to

impact on the amenity of neighbours in residential areas, and therefore classification as Use Class E(g)(iii) is not considered appropriate. This approach is consistent with the Inspectors conclusions within appeal decision APP/Y9507/X/23/3321162 which stated the following:

“To my mind a micro-brewery, even a small one, is a use that could have serious emissions of fumes from the processes involved that could have a considerable impact on the amenity of neighbours in a residential area, and its classification in Use Class B2 and not E(g)(iii) is correct.”

5. Article 3(6) of the Use Classes order specifies several uses that are not included within any of the use classes (sui generis) and so a material change to or from such a use constitutes development. Article 3(6)(p) specifies “drinking establishments” as not falling within any use class and so as a sui generis use. Therefore, the taproom would be considered a sui generis use.

Lawful use and rights

6. The lawfulness of the proposed use will stem from the lawful and established use of the site. The lawful and established use of the site is not wholly clear and is ambiguous. It appears that it was as car repairs or car wash use until around 2003 when the arches were refurbished. This was subject to a planning permission granted in September 2003 ref no PEX0200413. The application was for Arches 74-79 Randolph Street, Arches 87-91 Baynes Street, and it identifies arch 87 as being in Class use B2 general industrial use at the time (car related). The permission granted permission for a change to B1. The Planning Appraisal submitted with the application states that at the time of the current application the site was vacant and appears to have last been in use as a scaffolders yard (Use Class B8).
7. There is no clear evidence the 2003 permission (PEX0200413) was implemented, or a change occurred to a use in Class B1. In any event, condition 6 attached to that permission prohibited development until a programme of ground investigation had been submitted and approved by the council. This condition precedent went to the heart of the permission. There is no record of this submission and approval, and it therefore appears the permission was not capable of lawful implementation.
8. Thus, whilst there is some ambiguity about the previous use of the site prior to the current application being lodged, it seems that the established and lawful use of the property is either as a general industrial use (under Class B2), or as a light industrial use (under what is now Class E). The property is rated as a “workshop” for business rates purposes which supports this.
9. It is noted that the site is currently being used as a micro-brewery and taproom without the benefit of planning permission.

Proposed Use

10. The proposed use is as a microbrewery, with a tap room open to visiting members of the public. Taken on its own, the brewery would fall in Class B2. However, introducing a taproom use to the mix would change the character of the use, bringing in visiting members of the public, increasing foot traffic, changing staffing levels, and resulting in activity levels capable of noise and disturbance. Such material impacts stemming from the taproom/bar element of the use could take the overall use outside of these use classes if it is not ancillary to a primary use as a brewery.
11. The micro-brewery would produce around 200 barrels per year (or around four a week). The tap room and tasting rooms would be open to visiting members of the public. The Premises License states that the retail of alcohol is permitted to occur on Fridays between 16:00 – 21:00 and Saturdays between 12:00 – 21:00 and that patron numbers shall be limited to a maximum of 50 outside and 50 indoors.
12. The proposal would include tables and chairs with a capacity of around 100 people at the premises during the opening hours, which would be a significant intensity of use of this site and its garden, especially given the overall size. Due to the amount of people proposed to use the premises as a drinking establishment, with over 60 people to be locate in the courtyard area, this function would go

above and beyond only an ancillary relationship to the main brewing processes. It would have a material and notable planning impact, including a likely impact on the neighbouring amenity. It also seems the brewery could operate without a taproom/bar. And in fact, the tap/room bar could also be operated without on-site brewery processes, although there is a clearer relationship in this direction. Given that the brewery operation requires the use of the whole space of the arch, when tables and chairs are set out for the taproom use, there would not be enough space for the brewery to operate. As such, both activities could not feasibly operate at the same time, further demonstrating that the proposed commercial use as a taproom would not be considered ancillary to the main use as a microbrewery.

13. The primary use would be a composite use as a micro-brewery and a drinking establishment, or potentially just as a drinking establishment with an ancillary micro-brewery (especially if the drinking element further increases).
14. Either way, the use would be a *sui generis* use, not falling into use Class B2 or Class E. As such, the material change of use to a micro-brewery and drinking establishment would be *sui generis* which would require planning permission. As such, it is recommended that the Lawful Development Certificate (Proposed) is refused.

Recommendation: Refuse Lawful Development Certificate (Proposed)

15. The proposed use of the site as a micro-brewery with a taproom with tables and chairs in the arch and garden would be outside of any use class (*sui generis*) and so a material change to this use would require planning permission.