

LDC (Proposed) Report		Application number	2024/2206/P
Officer		Expiry date	
David Peres Da Costa		26/07/2024	
Application Address		Authorised Officer Signature	
1 Triton Square London NW1 3AN			
Conservation Area		Article 4	
No		There are Article 4 directions but none relevant to this application.	
Proposal			
Use of first to eighth floors for life science and innovation uses within use class E(g)(ii).			
Recommendation:	Grant lawful development certificate		
Application Type:	Certificate of Lawful Development for a Proposed Use		

1. Site description

1.1. The site is occupied by a 9 storey building (plus basement) which sits within Regent's Place (a 13-acre site), a predominantly office campus but with a mix of others use and includes a series of public spaces including Regent's Place Plaza. The Regent's Place campus is located immediately to the north of Euston Road, between Great Portland Street and Warren Street Stations, and in close proximity to Regent's Park and Euston.

2. Planning History

- 2.1. **2016/6069/P:** Erection of 3 storey extension at roof (6th floor) level of 1 Triton Square to provide additional office floorspace (Class B1) with relocated plant above, creation of roof terraces at 6th floor level, reconfiguration of ground floor including infill of Triton Square Mall including flexible retail (A1, A3 and A4), affordable workspace (B1) and reprovision of gym (D2); erection of part 6, part 9 storeys residential building to provide 22 flats (10 x 3-bed, 11 x 2-bed and 1 x 1-bed) (Class C3) following demolition of St Anne's Church (Class D1); hard and soft landscaping including garden at junction of Longford Street and Triton Square; reconfigured vehicle and pedestrian accesses; and other ancillary works. Granted Subject to a Section 106 Legal Agreement 21/11/2017
- 2.2. **2024/0409/P:** The re-positioning of 1 Triton Square for life science and innovation uses to provide lab and office space involving plant work to roof (flues and new plant room), installation of gas store to west side of site, cryogenic storage at ground floor level on eastern side, amendments to existing façade to provide new

louvres (all elevations) and ancillary works. This application is pending determination.

3. Lawful development certificate application

3.1. Section 192 of the Town and Country Planning Act 1990 provides for an application to determine whether any proposed use or operations would be lawful for planning purposes. This application seeks to determine if the following use would be lawful: Use of first to eighth floors for life science and innovation uses within use class E(g)(ii).

4. Background

4.1. Planning permission was granted 21/11/2017 (subject to a legal agreement) for the erection of a 3-storey roof extension to the subject property to provide additional office floorspace (2016/6069/P). The subject property was in office use at 2nd to 6th floor prior to this redevelopment.

4.2. Various alterations and amendments have been approved in relation to the original planning permission via a number of non-material amendments but there have been no changes to the relevant part of the planning permission describing the office floorspace use.

4.3. Permission 2016/6069/P has been implemented and the redeveloped building has been practically completed to shell and core and toilets and lift lobbies have been fitted out, in anticipation of further fit out prior to occupation. It was intended that the office floorspace would be fitted out and occupied by an incoming tenant, however that tenant terminated their lease of the building and further fit-out of the office floorspace has not been commenced as a result.

4.4. Following amendments to the Town and Country Planning (Use Classes) Order 1987 ("UCO 1987") which came into effect from 1 August 2021, Class B1 uses (including B1(a) offices) have been subsumed along with various other uses into Class E (Commercial, Business and Services).

5. Assessment

5.1. The applicant is proposing to use the subject property for life sciences and innovation uses. Life sciences and innovation uses fall under Class E (Class E(g)(ii): "for the research and development of products or processes 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", and so are also a use in Class E.

5.2. Development is defined by s55 of the 1990 Town and Country Planning Act as 'the carrying out of building, engineering, mining or other operations, in, on, or under land or the making of any material change in the use of any buildings or other land'. As such, planning permission is generally required if there is a material change in the use of any buildings or land.

- 5.3. However, section 55(2)(f) TCPA 1990 provides that in the case of buildings used for a purpose of any class specified in the UCO 1987 the use of the buildings (or any part of the buildings) for any other purpose of the same class shall not be taken to involve development of land. Therefore, planning permission is not required for such changes in the use of land.
- 5.4. Similarly, Article 3(1A) of the UCO 1987 provides that where a building is used for a purpose specified in Schedule 2 (which includes Class E), the use of that building for any other purpose of the same class is not to be taken to involve the development of the land (and therefore does not require planning permission).
- 5.5. As such, where the existing use of the Property is as offices, planning permission will not be required to carry on life sciences and innovation uses at the Property (save for any operational development required to facilitate this use for which planning permission will be required).
- 5.6. The existing use of the Property
- 5.7. In order to determine whether section 55(2)(f) TCPA 1990 and section 3(1A) of the UCO 1987 can be relied upon to support a change of use from office to life sciences and innovation uses without the requirement for planning permission it is necessary to identify whether the property is in office use, which includes whether it can demonstrably be shown that the office use has been instituted having regard to the relevant legal tests for what constitutes the institution of a use.
- 5.8. Neither the TCPA 1990 nor the UCO define what is required to institute a use. However, there is relevant case law which has considered the point at which a use has been instituted. These cases have been in the context of changes of use, and usually in a planning enforcement context.
- 5.9. Relevant Case Law
- 5.10. The decision in *Impey v Secretary of State for the Environment* (1984) provides authority that a change of use can take place before any use for the stated purpose actually takes place if there are physical works which show an intention to use the property for a particular use.
- 5.11. In the *Impey* case, the owner of a kennels carried out internal and external works for the purpose of converting the building into two units of residential accommodation. Mr Impey had constructed an access road and undertaken internal alterations. Donaldson LJ considered the question of when a change of use occurs in the context of a change of use of a building to residential use where operations are undertaken to convert the premises and they are put on the market as being available for letting. In this regard Donaldson LJ stated as follows:
- 5.12. "Before the operations have been begun to convert to residential accommodation plainly there has been no change of use, assuming that the premises are not in the ordinary sense of the word being used for residential purposes. It may well be that during the course of the operations the premises will be wholly unusable for residential purposes. It may be that the test is whether they are usable, but it is a question of fact and degree."

- 5.13. Donaldson LJ went on in Impey to state:
- 5.14. "Applying that to this case, I would say that the physical state of these premises is very important, but it is not decisive. Actual use or intended use or attempted use is important but not decisive. These matters have to be looked at in the round."
- 5.15. Mr David Widdicombe QC, sitting as a deputy judge in the case of *Backer v Secretary of State for the Environment (1984)*, expressed doubt about the decision in Impey starting that, but for it, he would have had no hesitation in accepting an argument that "physical works of conversion, that is, say building operations, cannot by themselves give rise to a material change of use: some actual use is required".
- 5.16. However, the Supreme Court judgement in *Welwyn Hatfield BC v SSCLG & Beesley [2011]* stated that the approach taken in Impey is to be preferred to the doubt expressed in Backer.
- 5.17. In that case the Supreme Court considered the Secretary of State's arguments that in the short period between completion of a building and its residential occupation the building had no use, so that there was a change of use from no use to use as a dwelling house.
- 5.18. Lorde Mance stated the following:
- 5.19. "As a matter of law, I consider that the approach taken by Donaldson LJ was correct and is to be preferred to the doubt expressed in Backer. Too much stress has, I think, been placed on the need for "actual use", ... it is more appropriate to look at the matter in the round and to ask what use the building has or of what use it is. As I have said, I consider it artificial to say that a building has or is of no use at all, or that its use is as anything other than a dwelling house, when its owner has just built it to live in and is about to move in within a few days' time (having, one might speculate, probably also spent a good deal of that time planning the move)."
- 5.20. Application of case law to the application site
- 5.21. To look at the evidence in the round it is necessary to consider the former use of the application site, the physical state of the application site at the relevant date, the actual use of the building at that date, the intended use and the whole chronology.
- 5.22. Evidence of the implementation of the permission has been provided to support the application and includes the following:
- 1 Triton Square Handover Form, prepared by British Land dated 1st March 2018
 - Project Mint Weekly Newsflash, prepared by M3 Consulting dated 02/03/18;
 - Disinfection Certificate, prepared by Guardian Water dated 27th February 2018;
 - Lift Isolations, prepared by Jackson group dated 2 March 2018;
 - Gas Isolation, prepared by Optimum dated 28/02/18;

- Gas Isolation Certs, prepared by Optimum dated 28/02/18;
- UKPN Disconnections Certs, prepared by UK Power Networks Ltd dated 13.1.18 and 1.3.18; and
- Triton Square Isolation Photos dated 1st March 2018.

5.23. A Statutory Declaration by Timothy Downes (dated 23rd April 2024) has been submitted to support the application. He has been the Development Director at British Land since 2013. The Statutory Declaration includes various exhibits:

- Site Plan Proposed (exhibit TD1)
- Section 106 Discharge Notice for Clause 6.1 (exhibit TD2)
- Existing drawings submitted to support lawful development certificate application 2015/5247/P (exhibit TD3)
- Existing drawings submitted to support planning application 2016/6069/P (exhibit TD4)
- Copy of Practical Completion Certificate (exhibit TD5)
- Photographs showing the physical and operational status of the property (exhibit TD6)
- Legal agreement dated 21 November 2017 associated with planning permission 2016/6069/P which shows Dentsu's interest in the property (exhibit TD7)

5.24. The first to eighth floors of the application site has been constructed to shell and core and toilets and lift lobbies have been fitted out in anticipation of further fit-out. The Statutory Declaration includes photographs of the current state of the site and show the extent of fit out including washrooms, lift lobbies, stairs, escalators and bike stores.

5.25. The intention for the use and the attempted use of the application site is also important: the application site has been developed with the intention to be let as offices in accordance with planning permission ref: 2016/6069/P. Evidence has been provided in the Statutory Declaration that a pre-let agreement for lease was entered into with Dentsu on 21st November 2017. The Statutory Declaration confirms that this pre-let agreement was terminated 31st August 2021 and Facebook entered into an agreement for lease with leases on the first, second, third, fourth, fifth, sixth, seventh and eighth floors of the application site granted 27th September 2021 (expiring 23rd May 2041). The leases were terminated on 27th September 2023.

5.26. The legal note submitted to support the application states the application site "was leased for use as office floorspace, and but for the tenant terminating that lease the floorspace would have been further fitted out and occupied as an office."

5.27. It is also relevant that the use of the floorspace which was existing prior to the Planning Permission being granted and the redevelopment being undertaken was in office use, and as such office use of this floorspace in the building has consistently been its lawful authorised use.

5.28. Officers consider that the principles established in *Impey* and affirmed in the Supreme Court Judgement in *Welwyn Hatfield* are applicable in the circumstances, and that when considering matters in the round and asking what use the building has or what use it is, this strongly supports the position that the

floorspace at the application site (1st to 8th floor) is either in office use or such use has been instituted following the redevelopment of the site in accordance with the planning permission 2016/6069/P.

- 5.29. The office use (pre-existing or instituted) at 1st to 8th floor falls within Use Class E (E(g)(i)). Use of the first to eighth floors for life science and innovation uses also falls within Use Class E (E(g)(ii)). As such, the proposed use does not involve the development of the site and therefore does not require planning permission.

6. Recommendation

- 6.1. Grant lawful development certificate for the proposed use