

LDC (Proposed) Report		Application number	2024/5487/P
Officer		Expiry date	
Brendan Versluys		03/02/2025	
Application Address		Authorised Officer Signature	
46 Grafton Road London NW5 3DU			
Conservation Area		Article 4	
Inkerman		Article 4 Direction (basements)	
Proposal			
The mixed use of the cafe, as a day-time cafe/restaurant with a primary cooking function and as a live music/entertainment venue (Sui Generis), 1pm to 11pm seven days a week			
Recommendation:		Refuse Certificate	
Introduction			
<p>The application site is a three-storey end of terrace building situated on the eastern side of Grafton Road, at the corner of Inkerman Road and Grafton Road.</p> <p>The site is not listed and is located within the Inkerman Conservation Area.</p> <p>The ground floor of the building is occupied by 'Map Studio Café' (MAP), a live music and entertainment venue with a food and beverage element. The first and second floors of the building are understood to be occupied as a recording studio which is ancillary to the ground floor live music and entertainment venue.</p>			
History			
<p>Planning permission (ref. 2012/0100/P) was granted 21 September 2012 for "Continuous use of part of the ground floor and part of the first floor as a café, involving a change of use from retail (Class A1) to café (Class A3)".</p> <p>Condition 5 of the permission outlines:</p> <p><i>"The use hereby permitted shall not be carried out outside the following times 8am to 6pm (Mondays-Saturdays) and 9am to 6pm (Sundays and Bank Holidays).</i></p> <p>Condition 7 also states:</p> <p><i>"No primary cooking of food shall be carried out within the premises. Only reheated or cold food that has been prepared elsewhere shall be served within the premises"</i></p> <p>The application covering letter advises that since the permission was implemented in 2013, the cafe has also been used as a live music/entertainment venue and for various private events during the evenings and nighttime. The premises is also frequently hired out for private events.</p> <p>In relation to conditions of the extant permission, the covering letter outlines the café space has been in continuous mixed use as a live music/entertainment venue (Class E) from the hours of 6pm-11pm. The letter outlines the opening hours have been utilised continuously since 2013 until</p>			

the present day.

The letter also advises hot food has been served within the café/restaurant since the permission was implemented in 2013. The letter outlines primary cooking has taken place on site, with hot food served at the premises continuously since 2013 until the present day.

The application seeks to demonstrate that, on the balance of probability, the use of the property as café and live music/entertainment venue (Sui generis) with operating hours 1pm – 11pm 7 days a week, and that the premises serves hot food prepared on-site, began at least ten years before the date of the application, such that a retention of the use and non-compliances with the extant permission 2012/0100/P would not require planning permission.

Applicant's Evidence

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

- Certificate of Existing Lawful Use Statement prepared by ET Planning dated 07 December 2024.
- Statutory Declaration of Chris Townsend, the MAP business operator and leaseholder of the commercial unit.
- Reviews from Tripadvisor.com and Google Business Reviews dating from April 2013, July 2013, 2016, February 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024 describing the premises as a 'café jazz/music venue', cites music artists/bands performing at the venue, playing live music.
- Screenshots of Instagram posts dating from September 2015, August 2016, July 2019, February 2020, September 2020, June 2021, October 2021, January 2022, July 2023 and March 2024, advertising MAP and some posts listing music events and film screenings, and food (requiring primary cooking at the premises) being served at the premises.

Council's Evidence

- Screenshot of MAP website dated 14/04/2012 – 31/07/2013, describing an event dated 19/04/2012, listing the premises' operating hours at 8am – 6pm Monday to Wednesday, 8am – 11pm Thursday, 8am – 6pm Friday to Sunday.
- Screenshot of MAP website dated 31/07/2013, describing an event dated 30th September 2013, listing the premises' operating hours at 8am – 6pm Monday to Wednesday, and noting the premises as having a planned closure from 1st August for refurbishment.
- Screenshot of MAP website dated 4/11/2013, describing an event dated 30th September 2013, listing the premises' operating hours at 8am – 6pm Monday to Wednesday, and noting the premises as having a planned closure from 1st August for refurbishment.
- Screenshot of MAP website dated 21/01/2015, stating the premises will reopen 31/01/2015.
- Screenshot of MAP website dated 19/02/2015, listing the premises' operating hours at 8am – 6pm Wednesday to Saturday, 9am to 6pm Sunday, open till late on event nights, closed on Monday – Tuesday.
- Screenshot of MAP website dated 22/03/2015, listing the premises' operating hours at 8am – 6pm Wednesday to Saturday, 9am to 6pm Sunday, open till late on event nights, closed on Monday – Tuesday.
- Screenshot of MAP website dated 22/04/2015, listing the premises' operating hours at 8am – 9pm Tuesday to Saturday, 9am to 6pm Sunday, open till late on event nights, closed on Monday.
- Screenshot of MAP website dated 11/10/2015, listing the premises' operating hours at 8am – 9pm Tuesday to Wednesday, 8am till late Friday and Saturday, 9am to 6pm Sunday, closed on Monday.
- Screenshot of MAP website dated 2/11/2018, listing the premises' operating hours at 8am – 6pm Tuesday to Sunday, open till late on event nights, closed on Monday, recording studio open 24 hours 7 days a week.

- Screenshot of MAP website dated 5/12/2019, listing the premises' operating hours at 9am – 6pm Monday to Sunday, open till late on event nights, recording studio open 24 hours 7 days a week.
- Screenshot of Instagram post dated 7/06/2021, noting the premises' new opening hours as open until 8pm.
- Screenshot of MAP website dated 29/11/2021, listing the premises' operating hours at 10am – 8pm Monday to Sunday, open till late on event nights, recording studio open 24 hours 7 days a week.
- Screenshot of MAP website dated 18/05/2022, listing the premises' operating hours at 11am – 11pm Monday to Sunday, open till late on event nights, recording studio open 24 hours 7 days a week.
- Screenshot of MAP website dated 6/006/2023, listing the premises' operating hours at 1pm – 11pm Monday to Sunday, open till late on event nights, recording studio open 24 hours 7 days a week.
- Floor plans showing annotating areas of use/noise generation at the premises, over the ground, first and second floors.

One objection has been raised by a neighbouring resident regarding noise nuisance from the premises, and an enforcement case has been opened (ref. EN24/0064).

There is no other relevant planning or enforcement history for the subject site.

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 (DOE Circular 10/97, 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, 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.

The Applicant's evidence includes a statutory declaration of the operator of MAP, attesting the building has been used, since planning permission 2012/0100/P was implemented in 2013, as a live music/venue and private events during the evenings and nighttime, contrary to the restriction of operating hours till 6pm in condition 5 of the permission. The statement outlines the premises' current operating hours are Monday to Sunday 1pm – 11pm. The statement also notes that in addition to the daytime ground café use and office use at the upper floors, in the evenings, the ground floor space offers live entertainment events such as live music or art exhibitions where drinks are served in the evenings/night-time, and the premises can be hired out for private events. The statement outlines the only gaps in operating hours for the premises since 2013, are during the period of the unit's refurbishment and the Covid-19 pandemic, for which the premises was closed during the lockdown in 2020.

The applicant's evidence also includes various screenshots from Tripadvisor.com with reviews of the café (from patrons) and social media posts on Map's Instagram café listing music events and film screenings, and food (requiring primary cooking at the premises) being served at the premises.

Regarding the 10-year period, the evidence of the listings on MAP's website, suggests the premises closed in August 2013 for refurbishment and re-opened again on 31st January 2015. A further screenshot from MAP's website confirms the premises was at least operating from 19/02/2015.

Separately, the evidence suggests the premises closed from March 2020 and reopened in September 2020 and closed on an unspecified date and for an unspecified period following this and reopened again in June 2021.

As there were at least three confirmed extended closures in the 10-year period of the premises' operations, this is considered sufficient evidence to outweigh the Applicant's evidence that the property has operated cafe/restaurant and as a live music/entertainment venue in the evening/night-time, 1pm to 11pm seven days a week, for at least an uninterrupted 10-year period.

Similarly, regarding the non-compliance with condition 7 of the extant permission restricting primary cooking of food at the premises, while it is considered primary cooking has occurred at the premises, it is not considered there is sufficient evidence the non-compliance has occurred for an uninterrupted period of at least 10-years.

Specially regarding opening hours and non-compliance with condition 5 of the extant permission restricting the premises' operating hours to 8am to 6pm (Mondays-Saturdays) and 9am to 6pm (Sundays and Bank Holidays), it is clear the operating hours have been exceeded since 6pm since implementation of the permission, however prior to 2021 the evidence suggests operating hours after 6pm have only been intermittently for live music events and not for a continuous period, and the premises has ordinarily closed at 6pm.

Based on the evidence submitted the Applicant has not demonstrated that the use operated as a consistent mixed use of the cafe, as a day-time cafe/restaurant and as a live music/entertainment venue (Sui Generis), 1pm to 11pm seven days a week. Instead, evidence and available information suggests at least three extended closures occurred during the 10-year period.

RECOMMENDATION:

Taking into account the evidence submitted by the applicant, and the Council's knowledge of the site and its planning history, the evidence does not irrevocably demonstrate that beyond doubt the premises has operated as a mixed use day-time cafe/restaurant and as a live music/entertainment venue (Sui Generis) use for a continuous period of ten years or more.

In the absence of adequate evidence to support, on the balance of probabilities, that the business has operated as a mixed use day-time cafe/restaurant and as a live music/entertainment venue (Sui Generis) for a continuous period of ten years or more, it is recommended that the certificate of lawfulness should be refused.

Additionally, in the absence of adequate evidence to support, on the balance of probabilities, that the premises has operated to 11:00pm seven days a week, and carried out and served food prepared via primary cooking at the premises, for a continuous period of ten years or more, it is recommended that the certificate of lawfulness should be refused.

Refuse Certificate of Lawfulness