

LDC Report		Expiry date: 07/05/2025	
Officer		Application Number	
John Nicholls		2024/4237/P	
Application Address		Recommendation	
Arches 43-46 Castle Mews London NW1 8SX		Grant certificate of lawfulness (existing)	
1st Signature		2nd Signature (if refusal)	
Proposal			
Use of Arches 43-46, Castle Mews for storage and distribution (Class B8).			
Assessment			
<p>Site Description</p> <p>The application site comprises a run of four adjoining railway arches on Castle Mews, located within the North London Line railway viaduct in its stretch between Prince of Wales and Castle Roads. The site is bounded by (but inaccessible from) rear gardens to Hadley Street to the east; Castle Road to the south; and Castle Mews to the west. The site adjoins further railway arches to the north.</p> <p>The site is neither listed nor located within a Conservation Area.</p> <p>Assessment</p> <p>The application seeks to confirm that the lawful existing use of the Arches numbered 43-46 Castle Mews, NW1 8SX, is Class B8 (Storage or distribution) for the purposes of Section 191 of the Town and Country Planning Act 1990 (as amended).</p> <p><u>Legislation</u></p> <p>Section 191 of the Town and Country Planning Act 1990 (as amended) – Certificate of Lawfulness of Existing Use or Development (CLEUD) sets out the tests for the lawfulness of a use of a site under this section of the Act, namely:</p> <p><i>(1) If any person wishes to ascertain whether—</i></p> <p><i>(a) any existing use of buildings or other land is lawful;</i></p> <p><i>he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.</i></p> <p><i>(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.</i></p> <p>Furthermore, Section 171B of the Act states (in relation to time limits):</p> <p><i>(3) In the case of any other breach of planning control, no enforcement action may be taken</i></p>			

after the end of the period of ten years beginning with the date of the breach.

Finally, Section 56 of the Act states, (in relation to when time development commences):

- (1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—*
- (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).*
- (2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.*
- (4) In subsection (2) “material operation” means—*
- (a) any work of construction in the course of the erection of a building;*
- (aa) any work of demolition of a building;*
- (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;*
- (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);*
- (d) any operation in the course of laying out or constructing a road or part of a road;*
- (e) any change in the use of any land which constitutes material development.*

Applicant's Evidence

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

- A cover letter explaining the planning history of the site dated 12 February 2025;
- A Statutory Declaration by David Smith (Head of Leasing West London of The Arch Company Properties Limited and former head of Network Rail Lettings) dated 11/02/2025;
- Tenancy Lease Agreement between GH Buttles PLC and Network Rail between 25/12/1985 and 13/03/2017 for Arch 43;
- Tenancy Lease Agreement between Network Rail Infrastructure Ltd. and Grain TR Ltd. Between 23/05/2018 and 20/05/2017 for Arch 43;
- Tenancy Lease Agreement between Network Rail and Acquisitions (Fireplaces) Ltd. Between 22/03/2012 and 19/03/2015 for Arches 44-46;
- Tenancy Lease Agreement between Network Rail and Acquisitions (Fireplaces) Ltd. Between 20/03/2015 and 17/03/2018 for Arches 44-46;
- Existing Site Plan (Drawing No. 011) submitted for application ref. PEX0200409,
- Proposed Site Plan (Drawing No. 013, Rev. D) submitted for application ref. PEX0200409,
- Existing Elevation Drawing (Drawing No. 015) submitted for application ref. PEX0200409,
- Proposed Elevation Drawing (Drawing No. 019, Rev. A) submitted for application ref. PEX0200409,
- Existing General Arrangement Plan (Drawing No. 10200) submitted for application ref. 2022/4822/P,
- Site location plan, and
- Site photos dated May 2024

Council's Evidence

Relevant Planning History

Arches 44-46

35190 – The retention of previously unauthorised alterations in connection with the use of the premises as an extension of the business carried out in the adjoining property (i.e. timber and building material merchant, distributors, joinery manufacturers and sawmill). Granted **10/01/1983**

2022/4822/P – Demolition of existing lean-to extension and erection of a new single-storey lean-to extension with access doors. Granted **13/12/2022**

Arches 43-50

PEX0200409 – Change of use from B8 (storage and distribution) Use Class to B1 Use Class (business) together with the demolition of an existing extension, the alteration and refurbishment of the rail arches and the surrounding land. Granted **15/09/2003**

There are a number of pre-commencement conditions attached to planning approval ref: PEX0200409, which require details to be provided before works commenced for the following items. These are: condition 3 (details of cycle storage; height of boundary wall; paving materials; enclosure of condenser units; refuse bin enclosure; solid aluminium window frames and bricks and glazed blocks) and condition 6 (contaminated land ground investigation). Neither of these two conditions have been discharged.

Assessment

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 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 applicant’s case is that despite planning permission having been approved for a change of use from a B8 storage use to a B1 office use in Arches 43-50 in 2003, the works have not been implemented, and therefore the use is still within the B8 use class.

By virtue of Schedule 1, Part B of the Town and Country Planning (Use Classes) Order 1987, Class B8 is stated as being for storage or distribution.

The applicant has provided plans from the 2003 Change of Use permission (B8 to B1) Ref: PEX0200409, current site photos, and historic Google Street View photos, which all suggest that the works to implement the 2003 scheme have not occurred; the elevations on the current photos appear very similar to those on the existing plans from 2003.

The applicant has also provided various leases between the owners (Network Rail Ltd.) and other companies between the years 1985-2021 for use of the arches as storage and distribution sites for different companies, namely Butties (a timber merchants), Grain TR (furniture business), and Acquisition (fireplace business). It is understood that the arches have been

vacant since 2021.

The Business Rate records show that Arch 43 had a use of workshop and premises. This arch was used by Buttles in connection with their timber business and was largely used to park their lorries and cars for the timber business. Furthermore, this unit comprised 100sqm of space, and the area allocated to workshop use was limited to 40sqm. Therefore, it is considered that the workshop element of this unit up until 2021 was ancillary to the main use of B8 storage and distribution.

The Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the units within the arches are in existing use as a storage facility (Class B8), as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

Recommendation: Grant Certificate of Lawfulness