

LDC (Existing) Report		Application number	2025/1123/P
Officer		Expiry date	
Tony Young		08/05/2025	
Application Address		Authorised Officer Signature	
56 Belsize Lane London NW3 5AR			
Conservation Area		Article 4	
Belsize		Yes (basements / change of use to residential)	
Proposal			
Use of ground (rear part) and basement floors for veterinary services under Use Class E (commercial, business and service).			
Recommendation:	Grant Certificate of Lawfulness		

### Introduction

The application site comprises a mid-terrace 4-storey building located on the north-west side of Belsize Lane, north of junctions with Belsize Terrace and Belsize Crescent, and south of its junction with Belsize Mews. The immediate area is characterised generally by a parade of shops operating as a mix of retail and commercial uses fronting the main street at ground floor level.

The property is not listed and is located within the Belsize Conservation Area in which it is noted as making a positive contribution.

The application relates to the ground (rear part) and basement floors (the upper floors being occupied by a number of residential flats) and seeks confirmation from the Council that the use of ground (rear part) and basement floors for veterinary services under Use Class E (commercial, business and service) is lawful and would not require planning permission.

### Applicant's Evidence

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

- Supporting statement (with appendices) from Planning Development Management Ltd. (agent) dated 13/03/2025, in support of the assertion that the existing use of the relevant floor areas of the subject site for veterinary services, lawfully falls under Use Class E (commercial, business and service).
- Photographic survey dated 12/03/2025, showing the relevant areas of the application site, including the part (front) ground floor.

The applicant has also provided the following drawings:

- Unnumbered site location plan identifying the boundary of the site outlined in red.
- Existing ground floor plan (ref. 1568-0010) showing the relevant floor area and layout.
- Existing basement floor plan (ref. 1568-0020) showing the relevant floor area and layout.

## Council's Evidence

### Planning history:

There is the following planning history relevant to the subject site:

- **2017/3412/P** - Removal of condition 3 (personal permission) of planning permission ref: 2014/3227/P (dated 24/07/2014) for the change of use from retail (A1) to a veterinary surgery (sui generis). Removal of condition granted permission 15/08/2017
- **2014/3227/P** - Change of use of part ground and the basement floors from shop (Class A1) to veterinary surgery (sui-generis). Planning permission granted 24/07/2014

There is no relevant enforcement history for the subject site.

### Business rates:

- Valuation at the subject site (Bst & Gnd Fs 56 Belsize Lane London NW3 5AR) is listed as effective from 01/04/2023 to the present time. The site is described as 'Shop and premises' (Local Council reference: 00294005610013).
- The valuation is based on various ground and basement floor areas (retail zones a & b and internal storage).
- Previous valuations at the subject site with effective from 01/04/2017 to 31/03/2023 describe the site similarly and with the same division of floor areas.

### Retail surveys:

- Information provided from Council Retail Surveys dated between 2004 and 2022 indicate from the external frontage of the host property during that period that the ground floor unit was in use for purposes as a newsagents and then for arts and crafts (described as Class A1).

## Assessment

Regarding 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 (National Planning Practice guidance). 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.

Section 57 of the Town and Country Planning Act 1990 ("the Act") states that planning permission is required for the carrying out of any development of land. Development is defined by Section 55 of the Act as including '*... the making of any material change in the use of any buildings or other land*'.

However, s.55(2) sets out operations or uses of land that are not taken to involve development. This includes, at paragraph (f), changes of use between uses within the same use class. Therefore, movement from one primary use to another within the same use class is not considered to constitute development and does not require planning permission.

The applicant states that the host property is used as a retail shop at the front part of the ground floor and residential accommodation on the upper floors. More pertinent to this

current application seeking a certificate of lawfulness, the applicant confirms that the relevant floor areas, namely the lower ground and rear part of the ground floor, have been in continuous use since 2014 as a veterinary surgery; this being a referral veterinary surgery for specialist treatments for animals.

This is consistent with available planning history which confirms that planning permission (2014/3227/P) was granted for a change of use to part ground and the basement floors from a shop (Class A1) to a veterinary surgery (*sui generis*) in 2014. Furthermore, the Council does not have any evidence to contradict or undermine the applicant's version of events in this regard.

As such, based on the evidence provided, and taking into account all available planning history and other relevant information, on the balance of probability, the lawful planning use of the relevant parts of the application site are considered to have operated continuously as a veterinary surgery during the requisite 10-year period (stated as a falling within '*sui generis*' classification on the description of development on the decision notice granted in 2014).

Turning to the relevant Order, in this case the Town and Country Planning (Use Classes) Order 1987 (as amended), Use Class E of the Order was introduced 01/09/2020 and covers a broad number of commercial, business and service uses. These include (but are not limited to) the use, or part use -

- *E(c) - for the provision of the following kinds of services principally to visiting members of the public:*
  - (i) *financial services,*
  - (ii) *professional services (other than health or medical services), or*
  - (iii) *any other services which it is appropriate to provide in a commercial, business or service locality*
- *E(e) - for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner.*

Prior to the change in the Use Classes Order referred to above, veterinary surgery or practice use had commonly either been classified as '*sui generis*' (meaning '*of its own kind*' as it did not fall into any particular use class for the purposes of planning) or Use Class D1 (non-residential institutions - any use not including a residential use, such as, clinics, medical or health centres, creches, day nurseries, etc.). Therefore, while planning permission (2014/3227/P) granted in 2014 describes the veterinary use as '*sui generis*' for the relevant floor areas of the application site, reference to planning and appeals history confirms that many other permissions at other application sites have been classified in the past within Use Class D1 for similar veterinary purposes.

Indeed, the definition of the general range of uses and other services has become broader since the change in the Use Classes Order in 2020. For example, E(c)(iii) has been held in some recent cases to bring within Class E other '*sui generis*' uses such as tanning salons. The change in the Use Classes Order is also noted as being more specific in respect to medical and health services, describing a use principally provided to visiting members of the public under E(e). As a consequence, following the change in the Use Classes Order, there are several recent examples of planning permission and certificates of lawfulness granted which specifically classify veterinary use generally under Use Class E.

This is consistent with the argument put forward by the applicant in the supporting Planning Statement, most notably when asserting that veterinary services are medical or health services, principally to visiting members of the public, with little or no residential component, and are commonly sited in a commercial, business or service locality. This assertion is supported by evidence provided by the applicant in the form of several planning decision notices, Counsel's Opinion, and a High Court & Judicial Review decision also included in the application submission.

With this in mind, notwithstanding that the relevant planning permission (2014/3227/P) granted in 2014 previously described the veterinary surgery use as 'sui generis', the relevant floor areas of the application site are acknowledged, on the balance of probability, to have operated within a veterinary surgery use continuously during the requisite 10-year period.

Veterinary surgery use, comprising of animal health and medical services, is not specified in any planning use Class. However, use Class E(e) is '*for the provision of medical and health services, principally to visiting members of the public*'. As such, the Council considers that the interpretation that veterinary services are medical or health service falling within Class E(e), as asserted by the applicant and evidenced within the application submission, is correct and entirely consistent with the broader description of Use Class E as applying to commercial, business or services uses.

Additionally, it is noted that there are no planning conditions or obligations attached to any previous permissions at the application site that would restrict the use of the relevant floor areas solely to a veterinary surgery use or that would prevent any other Class E use from taking place.

### **Conclusion**

Overall, therefore, it is considered that the information provided by the applicant is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use of the relevant parts of the application site as a veterinary surgery began at least ten years before the date of this application and have continued to do so until the present time.

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, a use of the relevant floor areas of the property for any purpose falling within Use Class E does not fall within the "meaning of development" requiring planning permission as defined by Section 55 of the Town and Country Planning Act 1990 and is lawful.

In this respect, it is recommended that a Certificate of Lawfulness be granted.

**Recommendation:** Grant Certificate of Lawfulness